

STATE LAW LIBRARY

DEC 14 1979

OF MONTANA

REVISED CODES OF MONTANA

VOLUME 2

Part 2

1977 Cumulative Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF
REPLACEMENT VOLUME 2 (PART 2) OF
THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 2
(PART 2) THROUGH VOLUME 557, PACIFIC
REPORTER (2ND SERIES)

Edited by

THE PUBLISHERS' EDITORIAL STAFF

THE ALLEN SMITH COMPANY

Publishers

Indianapolis, Indiana 46202



REVISED CODES OF MONTANA

VOLUME 2

Part 2

1977 Cumulative Supplement

Copyright © 1969, 1971, 1973, 1974, 1976 by

THE ALLEN SMITH COMPANY

Indianapolis, Indiana

Copyright © 1977 by

THE ALLEN SMITH COMPANY

Indianapolis, Indiana

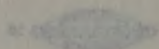
Revised by

THE PUBLISHERS' EDITORIAL STAFF

THE ALLEN SMITH COMPANY

PUBLISHERS

Indianapolis, Indiana 46202



NEW LAWS IN VOLUME 2 (Part 2)

For index see supplement to Replacement Volume 9

ENACTED IN 1969

- Debt adjusters, 18-401 to 18-403.**
- Election laws, 23-2601 to 23-3721, 23-3724 to 23-4611.**
- Fish and game wardens, protection of private property, 26-110.1, 26-110.2.**
- Fishing license, one day nonresident, 26-202.6.**
- Hunting or fishing season, closure during fire danger, 26-345.**
- Official state gem stones, 19-123.**
- Printing defined, 19-103.1.**
- Roadside menageries, 26-1205 to 26-1212.**
- Salmonid fish or eggs, importation of, 26-1701, 26-1702, 26-1704, 26-1705.**
- State central payroll system, 25-507.1 to 25-507.10.**
- Waste of fish or game, 26-307.2, 26-307.3.**
- Wildlife conservation license, 26-229 to 26-233.**

ENACTED IN 1971

- Dispensing of drugs by practitioners, 27-901 to 27-906.**
- Election laws,**
 - Legislative candidates, certificates of nomination where district determined by census districts, 23-3318.1.**
 - Registration of electors whose foreign service has terminated, 23-3724.**
 - School district to be shown in registration, 23-3004.1.**
- Fish and game,**
 - Caged fish in public waters, 26-813, 26-814.**
 - Falconry, 26-501.1.**
 - Federal actions injuring fish and wildlife, reports and objections to, 26-1508.**
 - Mountain lion, use of dogs for hunting, 26-303.5.**
- Flour and bread enrichment, 27-801 to 27-805.**
- Gates of the Mountain Game Preserve, 26-1128.**
- Littering, forfeiture of hunting or fishing license or camping permit, 26-812.**
- Milk producers and retailers, credit and financing restrictions, 27-414.1, 27-414.2.**
- Outfitters and guides, 26-908, 26-911 to 26-921.**
- Pesticides, 27-213 to 27-245.**

ENACTED IN 1973

- Constitutional convention question, frequency of submission, 23-4801, 23-4802.**
- Deceased voters, cancellation of voter registration, 23-3030.**
- Fish and game,**
 - Bag and possession limits fixed by commission, 26-104.3.**
 - Buffalo protected, 26-301.1.**
 - Checking stations established by department, 26-137, 26-138.**
 - Definition of terms, 26-101.1.**
 - Endangered species, 26-1801 to 26-1809.**
 - Fees from licenses and permits, use for recreational facilities, 26-234.**
 - Fish hatcheries and fish ladders, 26-104.5.**
 - Importation and propagation of fish and game, 26-104.4.**
 - Land use regulations, 26-104.9.**
 - Real property acquisition, development and sale by commission, 26-104.6.**
 - Refuges for fish and game, creation, 26-104.8.**
 - Research and educational projects, 26-104.7.**
 - Search and seizure by wardens, 26-110.3.**
 - Seasons fixed by commission, 26-104.3.**

NEW LAWS IN VOLUME 2 (Part 2) (Continued)

Justice of the peace fees in criminal actions, 25-310, 25-311.
Justice or judge, form of ballot on retention in office, 23-4510.1, 23-4510.2.
Salary schedule for county officers, annual establishment, 25-609.1.
State grass, 19-124.

ENACTED IN 1974

Elections,
 Gubernatorial campaign fund, 23-4901 to 23-4906.
 Primary elections for presidential preference, 23-3322 to 23-3328.

ENACTED IN 1975

Constables' salary and mileage allowance, 25-312.
Consumer reporting agencies, 18-501 to 18-521.
Election laws,
 Campaign financing, reporting and disclosure, contribution limitations, and enforcement, 23-4776 to 23-4795.
 Salary increase for political contribution prohibited, 23-4744.1.
Electric lines, relocation of overhead utility lines, 24-201 to 24-204.
Fish and game,
 Construction and hydraulic projects provisions, penalty for violations, 26-1509.
 Natural Streambed and Land Preservation Act of 1975, 26-1510 to 26-1523.
 Nongame certificate authorized, form, fee and proceeds, 26-202.8.
 Special elk permits, time limits, rules, 26-202.7.
Foods and drugs,
 Injunctions against violations, 27-615.2.
 Labeling of imported meats required, penalty, findings and purpose, 27-318 to 27-320.

ENACTED IN 1977

Election laws,
 Frauds, offenses and corrupt practices, 23-4796, 23-47-101 to 23-47-139.
 United States senator, election to fill vacancy, 23-4405.
Fish and game commission,
 Director, 26-106.3.
 Powers and duties, 26-103.1.
Fish and game department, employees, grievance procedure, 26-109.1.
Medical Malpractice Panel Act, 17-1301 to 17-1315.
Milk testing, 27-430.
State fish, 19-125.

AMENDMENTS IN VOLUME 2 (Part 2)

Assignments for benefit of creditors, real property, 18-318.
Compensatory damages in actions other than contract, 17-205.
Consumer reporting agencies, 18-510, 18-515.
Debt adjusters, exemptions from regulation, 18-403.
Definitions, 19-103.
Dueling, support of injured person's family, 17-504.
Election laws,
 Absentee voting and registration, 23-3703, 23-3704, 23-3706 to 23-3709, 23-3711 to 23-3713, 23-3715, 23-3718, 23-3720, 23-3721.
 Ballot form, 23-3506, 23-3509, 23-3512, 23-3513, 23-3515.
 Bond elections, grounds for contest, 23-4201.
 Canvass of vote and declaration of election, 23-4011, 23-4013 to 23-4016.
 Challenging voters, 23-3611 to 23-3613.
 Conduct of elections, 23-3605 to 23-3607.
 Constitutional amendments proposed, printing and publication, 23-2802.
 Definitions, 23-2601.
 Election proclamation of governor, 23-2901.
 Electronic voting systems, 23-3905.

AMENDMENTS IN VOLUME 2 (Part 2) (Continued)

Election laws (Continued)

Frauds, offenses and corrupt practices, 23-4737, 23-4744, 23-4746, 23-4757 to 23-4760, 23-4763, 23-4767, 23-4770, 23-4777, 23-4778, 23-4781, 23-4785 to 23-4788, 23-4794, 23-4795.
Judges and clerks of elections, 23-3201 to 23-3204, 23-3206.
Political party committees, 84-3403, 84-3405.
Precinct register book, marking, 23-3610.
Precincts, 23-3101, 23-3103.
Primaries and nominations by certificate, 23-3302, 23-3304, 23-3305, 23-3308, 23-3311 to 23-3316, 23-3318, 23-3319, 23-3321, 23-3326.
Public campaign fund, 23-4901, 23-4902, 23-4904, 23-4906.
Qualifications of voter, 23-2701.
Recounts, 23-4103, 23-4117, 23-4121.
Registrar's disposition of items, 23-4007.
Registration of electors, 23-2704, 23-3001 to 23-3003, 23-3006, 23-3012 to 23-3016, 23-3018, 23-3022, 23-3023, 23-3026.
Secret ballot, 23-2602.
Time of opening and closing polls, 23-2605.
United States senators and representatives, 23-4401, 23-4402.
Voting machines, 23-3801, 23-3804, 23-3807, 23-3812, 23-3822.

Electric lines construction, use of fiberglass insulators, 24-107.

Fees,

Clerk of District Court, 25-232.
Coroner, 25-236.
County clerks, 25-231.
Jurors and witnesses, 25-401, 25-403, 25-404, 25-409, 25-410.
Justices of the peace, 25-301, 25-307, 25-310, 25-311.
Naturalization, 25-210.
Penalties for false reports and offenses relating to fees, 25-222 to 25-225, 25-229.
Secretary of state, 25-102.
Sheriff, 25-226.

Fish and game,

Bag limit prizes, 26-809.
Beaver permits, 26-402.
Breeding and propagation permit, 26-1201.
Caged fish, restrictions on releasing, 26-813, 26-814.
Confiscated animals and parts, sale, 26-506, 26-507, 26-509.
Construction affecting fish and game, 26-1502, 26-1505, 26-1507 to 26-1509, 26-1514, 26-1517.
Contests based on size of game animals taken, 26-811.
Definitions, 26-101.1.
Endangered species, 26-1802, 26-1804 to 26-1808.
Falconry and raptors, 26-501.1.
Fines, bonds and costs, payment, 26-1001, 26-1002.
Fish hatcheries, 26-104.5, 26-115, 26-117.
Fur dealers, 26-1302, 26-1303, 26-1306.
Hunger, exception from restrictions in extreme cases, 26-1006.
Hunting and fishing restrictions, 26-301 to 26-303, 26-303.5 to 26-307, 26-315, 26-317, 26-319, 26-324, 26-330 to 26-333, 26-344, 26-345, 26-512.
Indians, agreements concerning hunting and fishing, 26-132.
Licenses and permits, 26-201 to 26-202.8, 26-204, 26-210, 26-213, 26-215, 26-217, 26-220 to 26-223, 26-228, 26-230, 26-232 to 26-234, 26-501.
Littering, forfeiture of license for, 26-812.
Meat from animals damaging property, disposition, 26-136.
Moneys earmarked for fish and game purposes, 26-121.
Possession of game, 26-801, 26-802, 26-804, 26-805.
Possession of illegally killed fish or game or illegal fishing instruments, 26-503.
Preserves for game, 26-1101, 26-1102.
Propagation of fish, land used for, 26-118.
Publication of laws, 26-125.
Roadside menageries, 26-1205, 26-1212.
Salmonid fish or egg importation, 26-1701, 26-1702, 26-1704, 26-1705.
Scientific purpose, taking game for, 26-1008.
Shipment of animals, 26-701, 26-704, 26-705, 26-708.
Snare traps lawful, 26-504.
Taxes on state land, payments in lieu, 26-133, 26-134.
Wardens, 26-107, 26-110 to 26-110.3, 26-114.

AMENDMENTS IN VOLUME 2 (Part 2) (Continued)

Fish and game commission,

Construction projects, 26-119.

Lands and waters, acquisition, sale and use, 26-104.6, 26-104.9.

Meetings, 26-103.

Fish and game department,

Employees, 26-108, 26-109.

Payment of salaries, expenses and claims, 26-123.

Powers and duties, 26-104, 26-104.4 to 26-104.7, 26-119.

Food and drugs,

Fair packaging and labeling, 27-702, 27-703, 27-706, 27-707, 27-709, 27-711, 27-713, 27-715 to 27-717, 27-719 to 27-722.

Flour and bread, 27-801, 27-802, 27-804, 27-805.

Food service establishments, 27-612 to 27-615, 27-620, 27-621, 27-625.

Holidays, 19-107.

Legal holidays provisions, school code unaffected, 19-108.

Menageries, 26-1206 to 26-1208, 26-1210, 26-1211.

Milk control law, 27-402, 27-403, 27-405 to 27-411, 27-413 to 27-417, 27-421 to 27-424, 27-426.

Notice, actual and constructive distinguished, 19-105.

Outfitters and guides, 26-904, 26-906, 26-908, 26-911 to 26-921.

Pesticides, 27-216, 27-217, 27-220 to 27-222, 27-225, 27-227, 27-228, 27-230 to 27-232, 27-234, 27-235, 27-240, 27-242, 27-243, 27-245.

Printing defined, 19-103.1.

Salaries,

County officers, 25-604, 25-605.

State officers, 25-501.

Specific performance, obligations not enforceable, 17-807.

State central payroll system, 25-507.1, 25-507.2.

Taxidermist's license, 26-907.

Traveling expense and per diem of public officers, 25-508.

MONTANA REVISED CODES

TITLE 17—DAMAGES AND RELIEF

Chapter

2. Compensatory relief—damages—interest—exemplary damages, 17-205.
5. Penal damages, 17-504.
8. Specific relief—performance of obligations, 17-807.
13. Medical Malpractice Panel Act, 17-1301 to 17-1315.

CHAPTER 1—RELIEF IN GENERAL

17-102. (8658) Relief in case of forfeiture.

Default of Contract for Deed

Where defendant had paid substantial sums on a contract for deed prior to default, and thereafter made a good faith effort to cure the default, tendering the whole amount remaining due under the contract as soon as possible, the district court properly relieved the default and allowed redemption of the property. *Parrott v. Heller*, — M —, 557 P 2d 819.

Repurchase of Stock

Forced sale of shareholder's stock pursuant to repurchase agreement and board of directors' resolution to exercise option

to repurchase stock at fifty per cent of book value was not a harsh forfeiture within meaning of this section where the shareholder was allowed, as a fringe benefit to encourage participation in corporate affairs, to purchase the stock for less than one-half of book value and where he had agreed to the terms of the repurchase agreement whereby the corporation could buy back the stock at fifty per cent of book value in the event of termination of his employment. *State ex rel. Howeth v. D. A. Davidson & Co.*, — M —, 517 P 2d 722.

CHAPTER 2—COMPENSATORY RELIEF—DAMAGES—INTEREST—EXEMPLARY DAMAGES

Section

17-205. In actions other than contract.

17-201. (8659) Person suffering detriment may recover damages.

Disability Insurance Policy

Insured was entitled to sue insurance company for actual damages for default on policy requiring it to pay car installments upon insured's disability as well as for exemplary damages since default was

oppressive, malicious, or fraudulent, and in violation of statute requiring prompt payment of claim. *State ex rel. Larson v. District Court*, 149 M 131, 423 P 2d 598, distinguished in 157 M 40, 482 P 2d 567.

17-204. (8662) Person entitled to recover damages may recover interest, etc.

Divorce Decree

This section applies only to damage awards and does not restrict interest on an equitable amount awarded on reimbursement in a divorce action. *Rogers v. Rogers*, — M —, 548 P 2d 141.

Interest on Judgment

Determination by the supreme court that the bank was liable for payment of dishonored checks (under section 87A-4-302) was based on contract law of negotiable instruments, and interest was ordered

from the second day after the bank's receipt of the checks. *Sun River Cattle Co. v. Miners' Bank of Montana*, — M —, 525 P 2d 19.

Pre-judgment Interest

Pre-judgment interest on a wrongful death claim is forbidden. *Wyant v. Dunn*, 140 M 181, 368 P 2d 917; *Daly v. Swift & Co.*, 90 M 52, 300 P 265; *Ryan v. Ford Motor Co.*, 334 F Supp 674.

17-205. (8663) In actions other than contract. In an action for the breach of an obligation not arising from contract and in every case of oppression, fraud, or malice, interest may be given, in the discretion of the jury. This section does not apply in actions for recovery of damages arising from injury to a person or property brought against a governmental entity under Title 82, chapter 43, as amended.

History: En. Sec. 4281, Civ. C. 1895; re-en. Sec. 6044, Rev. C. 1907; re-en. Sec. 8663, R. C. M. 1921; amd. Sec. 3, Ch. 234, L. 1977. Cal Civ. C. Sec. 3288. Field. Civ. C. Sec. 1836.

Amendments

The 1977 amendment added the second sentence; and made a minor change in punctuation.

Time Interest Commences Running

Interest commenced running upon filing of complaint against surety company on bond where no demand had been made on surety until filing of complaint; such interest was due notwithstanding surety's contention that since damages were not certain until time of filing of judgment, it could not be charged with interest from time of filing of complaint. *Lapke v. Hunt*, 151 M 450, 443 P 2d 493.

Conflicts

The conflicts principle requiring application of the law of the place of the tort for questions of pre-judgment interest has been followed by most courts. *Ryan v. Ford Motor Co.*, 334 F Supp 674.

17-208. (8666) Exemplary damages, etc.

Attractive Nuisance

In attractive nuisance case, parents of deceased child were not entitled to exemplary damages in absence of proof of willful disregard of duty or indifference on part of contractor which would permit inference of malice; exemplary damages are extraordinary in nature and are allowed as punishment where something more than mere negligence is alleged and proven. *Gagnier v. Curran Constr. Co.*, 151 M 468, 443 P 2d 894.

Counterclaim

On counterclaim by debtor against bank suing on note of debtor, evidence showing that bank converted funds and property of debtor to satisfy obligations of debtor's son for which debtor was not responsible and evidence showing bona fide intent of debtor to pay note was sufficient to warrant award of exemplary damages to debtor. *Security State Bank of Harlem v. Kittleson*, 149 M 183, 425 P 2d 72.

Fraud in Contract

Fact that alleged trickery by carpet seller arose during the contracting for the sale and installation of the carpeting did not make it "arise from the contract" within this section; the action was in tort, independent of the contract, and exemplary damages were not barred by this section.

Paulson v. Kustom Enterprises, Inc., 157 M 188, 483 P 2d 708.

Where the seller of a house represented that it had "two bathrooms" and showed buyers a room on the second floor equipped with the usual accoutrements of a bathroom, which buyer later discovered were not connected to any plumbing, and where shortly after buyers took possession the main sewer line burst due to faulty materials and installation, this section did not preclude buyers from choosing to affirm the contract of sale and suing in tort seeking actual and punitive damages for fraud and deceit. *State ex rel. Dimler v. District Court*, — M —, 550 P 2d 917.

Insurance Policy Default

Insured was entitled to sue insurance company for actual damages for default on policy requiring it to pay car installments upon insured's disability as well as for exemplary damages since default was oppressive, malicious, or fraudulent, and in violation of statute requiring prompt payment of claim. *State ex rel. Larson v. District Court*, 149 M 131, 423 P 2d 598, distinguished in 157 M 40, 482 P 2d 567.

Insurance Settlement

Where fraud of the insurer and agent in settling an automobile insurance claim by "cost of repair" and not "total loss"

is alleged but no provision of the Insurance Code was violated, the insured was not entitled to exemplary damages. *State ex rel. Cashen v. District Court*, 157 M 40, 482 P 2d 567, distinguished in 157 M 181, 483 P 2d 709, 716.

Slander

Where homeowner's slanderous statements that builder had cheated him were made to numerous people in community over two-year period and where speaker stated that "he was going to tack his [builder's] hide to the wall," jury had basis for finding sufficient malice to justify award of punitive damages. *McCusker v. Roberts*, 152 M 513, 452 P 2d 408.

Water Rights Dispute

In action concerning disputed water rights plaintiff was not entitled to punitive damages under this section since defendants were not found to be guilty of oppression, fraud or malice; further, exemplary or punitive damages cannot be recovered in absence of award of actual damages. *Smith v. Krutar*, 153 M 325, 457 P 2d 459.

When Exemplary Damages Not Recoverable

Taking possession of hay crop in exercise of rights under security agreement is not a ground for finding malice justifying assessment of exemplary damages. *Fairchild v. Williams Feed, Inc.*, — M —, 544 P 2d 1216.

CHAPTER 3—MEASURE OF DAMAGES

17-301. (8667) Measure of damages for breach of contract.

Certainty Required

Plaintiff who had to sell accounting business because of faulty computer, could not determine his damages by showing the difference between projected gross income for the year and his actual gross income. *Lovely v. Burroughs Corp.*, — M —, 527 P 2d 557.

Contracts for Sale of Real Estate

This section was applicable to determine damages for breach of contract and tortious injury to personal and real property where action was based on provision of contract prohibiting waste; damages for waste were recoverable despite fact that section 17-307 makes no specific provision therefor since this section clearly expresses that an aggrieved party is entitled to receive compensation for the loss he sustains. *Wiseman v. Holt*, — M —, 517 P 2d 711.

Instructions on Damages

Where contract for erection of silo was abandoned by defendant after negligent efforts at erection ended with collapse of silo in windstorm, plaintiff was entitled to jury instructions on damages relating both to breach of contract and to negligence. *Bos v. Dolajak*, — M —, 534 P 2d 1258.

Sale of Land

In computing damages for sale of land

constituting constructive fraud in that representations of acreage exceeded actual acreage, buyer was not entitled to damages for loss of profits based on number of cows which total ranch would support but was entitled to damages for missing acreage computed from contract value on per acre basis without distinction between deeded and leased land or fenced or open land. *Hardin v. Hill*, 149 M 68, 423 P 2d 309.

Silo Replacement

Where defendant constructed silo for dairy farmer in negligent manner such that wind blew it over just before completion, proper measure of damages was replacement cost of silo plus damages for loss of use less an amount for the foundation which remained usable. *Bos v. Dolajak*, — M —, 534 P 2d 1258.

Statutes Not Exclusive

Statutes on the measure of damages are not exclusive; damages in addition to those provided in the statutes are recoverable under this section. *Wiseman v. Holt*, — M —, 517 P 2d 711.

Unacceptable Installations

Proper measure of damages for faulty installation of showers in campground was the cost of reinforcing them and bringing them up to contract specifications. *Haggerty v. Selsco*, — M —, 534 P 2d 874.

17-302. (8668) Damages must be certain.

Profits

Where a contractor had lost his bonding capacity, and thereby future profits, be-

cause of a breach of contract by the state, and his accountants testified in detail as to his past earnings, net income, depreci-

ation taken, etc., for 22 years, the jury's award of \$78,000 was not too speculative as computed for the next 3 years, as

the profits were reasonably foreseeable. *Laas v. Montana State Highway Commission*, 157 M 121, 483 P 2d 699.

17-307. (8673) Breach of agreement to buy real property.

Remedy Not Exclusive

This section did not provide mandatory and exclusive formulae to determine damages for breach of contract and tortious injury to personal and real property; damages for waste in action based on provision

of contract prohibiting waste were properly recoverable under section 17-301 despite fact that this section did not provide specifically therefor. *Wiseman v. Holt*, — M —, 517 P 2d 711.

CHAPTER 4—DAMAGES FOR WRONGS

17-401. (8686) Breach of obligation other than contract.

Aggravation of Pre-existing Injury

Measure of damages in tort action includes damages for aggravation of pre-existing condition, but injured party is not entitled to recover damages which would have resulted from his previous condition even without aggravation; however, where it was reasonable to suppose that in absence of accident, intervertebral disc would have herniated within not more than two years, still injured party was entitled to damages resulting from hastening of back condition, including pain and suffering during additional period of disability reasonably caused by accident. *Kegel v. United States*, 289 F Supp 790.

Instructions on Damages

When contract for erection of silo was abandoned by defendant after negligent efforts at erection ended with collapse of silo in windstorm, plaintiff was entitled to jury instructions on damages relating both to breach of contract and to negligence. *Bos v. Dolajak*, — M —, 534 P 2d 1258.

Silo Replacement

Where defendant constructed silo for dairy farmer in negligent manner such that wind blew it over just before completion, proper measure of damages was replacement cost of silo plus damages for loss of use less an amount for the foundation which remained usable. *Bos v. Dolajak*, — M —, 534 P 2d 1258.

CHAPTER 5—PENAL DAMAGES

Section

17-504. Injuries inflicted in a duel—support of family of injured person.

17-504. (8697) Injuries inflicted in a duel—support of family of injured person. If any person slays or permanently disables another person in a duel in this state, the slayer must provide for the maintenance of the spouse of the person slain or permanently disabled, and for the minor children, in such manner and at such cost, either by aggregate compensation in damages to each, or by a monthly, quarterly, or annual allowance, to be determined by the court.

History: En. Sec. 4353, Civ. C. 1895; re-en. Sec. 6079, Rev. C. 1907; re-en. Sec. 8697, R. C. M. 1921; amd. Sec. 11, Ch. 535, L. 1975. Cal. Civ. C. Sec. 3347.

Amendments

The 1975 amendment substituted "spouse" for "widow or wife."

CHAPTER 8—SPECIFIC RELIEF—PERFORMANCE OF OBLIGATIONS

Section

17-807. What cannot be specifically enforced.

17-801. (8714) In what cases compelled.

Evidence

Court properly admitted extrinsic evidence in hearing on specific performance

of contract to sell realty since contract description was general and surveyor's description was by metes and bounds, but

both parties had originally agreed as to the location of the property and had signed the contract. *Milkovich v. Orr*, — M —, 529 P 2d 1382.

Inadequate Relief by Pecuniary Compensation

Under principle that monetary damages are presumed inadequate as remedy in contract for purchase of land, purchaser was entitled to specific performance notwithstanding seller's contention that presumption was rebutted by testimony of purchaser that he could ascertain damages

if not allowed to obtain the property. *Brown v. Griffin*, 150 M 498, 436 P 2d 695.

Real Estate Sale

Agreement to sell real estate, giving general description of the property, which had been signed by all parties, was enforceable by specific performance since there was no question as to the location of the property and the purchasers had obtained a survey and made the down payment with the approval of the sellers' agents. *Milkovich v. Orr*, — M —, 529 P 2d 1382.

17-804. (8717) Distinction between real and personal property.

Rebuttable Presumption

Under principle that monetary damages are presumed inadequate as remedy in contract for purchase of land, purchaser was entitled to specific performance not-

withstanding seller's contention that presumption was rebutted by testimony of purchaser that he could ascertain damages if not allowed to obtain the property. *Brown v. Griffin*, 150 M 498, 436 P 2d 695.

17-807. (8720) What cannot be specifically enforced. The following obligations cannot be specifically enforced:

1 to 4. * * * [Same as parent volume.]

5. An agreement to procure the act or consent of the spouse of the contracting party, or of any other third person; or

6. * * * [Same as parent volume.]

History: En. Sec. 4416, Civ. C. 1895; re-en. Sec. 6102, Rev. C. 1907; re-en. Sec. 8720, R. C. M. 1921; amd. Sec. 12, Ch. 535, L. 1975. Cal. Civ. C. Sec. 3390. Field Civ. C. Sec. 1893.

Amendments

The 1975 amendment substituted "spouse" for "wife" in subdivision 5.

17-808. (8721) What parties cannot be compelled to perform.

Assignment of Liquor License

In case where city held liquor license which it assigned to the lessee-operator of the municipal airport lounge facility then permitted reassignment directly from one lessee to the next as proprietorship of the lounge changed, city's willingness to re-new current operator's lease and permit

the assignment of the license was not sufficient consideration to permit the city to obtain specific performance of lease clause requiring reassignment of license to city upon termination of the lease. *State ex rel. Victor's, Inc. v. District Court*, — M —, 545 P 2d 1098.

CHAPTER 13—MEDICAL MALPRACTICE PANEL ACT

Section

- 17-1301. Short title.
- 17-1302. Purpose.
- 17-1303. Definitions.
- 17-1304. Montana medical malpractice panel.
- 17-1305. Compensation of the panel and staff—facilities for offices and hearings.
- 17-1306. Funding of act.
- 17-1307. Panel decision required—application.
- 17-1308. Application procedure.
- 17-1309. Panel selection.
- 17-1310. Time and place of hearing.
- 17-1311. Hearing procedures.
- 17-1312. Panel deliberations and decisions.
- 17-1313. Director—rules of procedure.
- 17-1314. Tolling of the statute of limitations.
- 17-1315. Maintenance of records.

17-1301. Short title. This act may be cited as the "Montana Medical Malpractice Panel Act".

History: En. 17-1301 by Sec. 1, Ch. 449,
L. 1977.

Title of Act

An act to establish a mandatory pre-trial review panel for medical malpractice claims; providing an immediate effective date.

17-1302. Purpose. The purpose of this act is to prevent where possible the filing in court of actions against health care providers and their employees for professional liability in situations where the facts do not permit at least a reasonable inference of malpractice and to make possible the fair and equitable disposition of such claims against health care providers as are or reasonably may be well founded.

History: En. 17-1302 by Sec. 2, Ch. 449,
L. 1977.

17-1303. Definitions. As used in this act, the following definitions apply:

(1) "Health care provider" means a physician licensed to practice medicine in Montana or a hospital, hospital-related facility, or long-term care facility.

(2) "Malpractice claim" means any claim or potential claim against a health care provider for medical treatment, lack of medical treatment, or other alleged departure from accepted standards of health care which proximately results in damage to the patient, whether the patient's claim or potential claim sounds in tort or contract, and includes but is not limited to allegations of battery or wrongful death.

(3) "Panel" means the Montana medical malpractice panel provided for in 77-1304.

History: En. 17-1303 by Sec. 3, Ch. 449,
L. 1977.

17-1304. Montana medical malpractice panel. (1) The Montana medical malpractice panel is created. The panel is attached to the Montana supreme court for administrative purposes only, except that 82A-108(2) does not apply. The panel shall review all malpractice claims or potential claims against health care providers covered by this act, except those claims subject to a valid arbitration agreement allowed by law or upon which suit has been filed prior to the effective date of this act.

(2) Those eligible to sit on the panel are health care providers licensed pursuant to Montana law and residing in Montana and the members of the state bar of Montana.

(3) Claimants shall submit a case for the consideration of the panel prior to filing a complaint in any district court or other court sitting in Montana by addressing an application, in writing, signed by the patient or his attorney, to the director of the panel.

(4) The director of the panel shall be appointed by the executive director of the Montana medical association, subject to the approval of the

chief justice of the Montana supreme court. The director shall serve at the pleasure of, and the director's salary shall be set by, the executive director of the Montana medical association, subject to the approval of the chief justice.

History: En. 17-1304 by Sec. 4, Ch. 449,
L. 1977.

17-1305. Compensation of the panel and staff—facilities for offices and hearings. (1) All members of the panel shall be paid a salary in the amount of \$40 an hour, under guidelines promulgated by the Montana supreme court.

(2) All members of the panel, the director, and his staff are entitled to travel expenses incurred while on the business of the panel, as provided in 59-538, 59-539, and 59-801, but such expenses shall be approved by the director before payment is made.

(3) The panel may provide for the administration of oaths, the receipt of claims filed, the promulgation of forms required by this act, the issuance of subpoenas in connection with the administration of this act, and the performance of all other acts required to fairly and effectively administer this act.

(4) The director, subject to the approval of the chief justice, may employ and fix the compensation for clerical and other assistants as he considers necessary.

(5) The panel shall maintain adequate offices, in which its records shall be kept and its official business transacted.

(6) Panel hearings may be held in any county the panel considers necessary or advisable. The county commissioners or other governing authority shall provide, upon request of the director of the panel, suitable facilities for any such hearing.

History: En. 17-1305 by Sec. 5, Ch. 449,
L. 1977.

17-1306. Funding of act. (1) There is created a pretrial review fund to be administered by the director exclusively for the purposes stated in this act. The fund and any income from it shall be held in trust, deposited in an account, and invested and reinvested by the director with the prior approval of the director of the Montana medical association. The fund may not become a part of or revert to the general fund of this state but shall be open to auditing by the legislative auditor.

(2) To create the fund, an annual surcharge shall be levied on all health care providers. The amount of the assessment shall be set by the director, who shall allocate a projected cost among health care providers on a per capita basis. The director may provide a different allocation upon approval by the supreme court. Surplus funds, if any, over and above the amount required for the annual administration of the act shall be retained by the director and used to finance the administration of this act in succeeding years, in which event the director shall reduce the annual assessment in subsequent years, commensurate with the proper administration of this act.

(3) The annual surcharge for 1977 shall be paid on or before September 1, 1977, and annually thereafter on or before the date physicians' annual registration fees are due under 66-1042. The director has the same powers and duties in connection with the collection of and failure to pay the annual surcharge as the department of professional and occupational licensing has under 66-1042 in connection with physicians' annual registration fees.

History: En. 17-1306 by Sec. 6, Ch. 449,
L. 1977.

17-1307. Panel decision required—application. (1) No malpractice claim may be filed in any court against a health care provider before an application is made to the panel and its decision is rendered.

(2) The application shall contain the following:

(a) a statement in reasonable detail of the elements of the health care provider's conduct which are believed to constitute a malpractice claim, the dates the conduct occurred, and the names and addresses of all physicians and hospitals having contact with the claimant and all witnesses. Any amendments to the application must be filed not less than 14 days prior to the hearing date.

(b) a statement authorizing the panel to obtain access to all medical and hospital records and information pertaining to the claim and, for the purposes of its consideration of this matter only, waiving any privilege as to the contents of those records. Nothing in that statement may in any way be construed as waiving that privilege for any other purpose or in any other context, in or out of court.

History: En. 17-1307 by Sec. 7, Ch. 449,
L. 1977.

17-1308. Application procedure. (1) Upon receipt of an application for review, the director or his delegate shall cause to be served a true copy of the application on the health care providers involved. Service shall be effected pursuant to the Montana rules of civil procedure. If a health care provider involved chooses to retain legal counsel, his attorney shall informally enter his appearance with the director.

(2) The health care provider shall answer the application for review and shall submit a statement authorizing the panel to inspect all medical and hospital records and information pertaining to the application and, for the purposes of such inspection only, waiving any privilege as to the contents of those records. Nothing in the statement waives that privilege for any other purpose.

(3) In instances where applications are received employing a theory of respondeat superior or some other derivative theory of recovery, the director shall forward the application to the state professional societies, associations, or licensing boards of both the individual health care provider whose alleged malpractice caused the application to be filed and the health care provider named a respondent as employer, master, or principal.

(4) The panel director shall cooperate fully with the claimant in retaining a physician qualified in the field of medicine involved, who will consult with the claimant upon payment of a reasonable fee by the claimant.

History: En. 17-1308 by Sec. 8, Ch. 449,
L. 1977.

17-1309. Panel selection. (1) Application for review shall be promptly transmitted by the director to the directors of the health care provider's state professional society or association and the state bar, which shall each select three panelists within 30 days from the date of transmittal of the application.

(2) If no state professional society or association exists or if the health care provider does not belong to such a society or association, the director shall transmit the application to the health care provider's state licensing board, which shall in turn select three persons from the health care provider's profession, and where applicable, to persons specializing in the same field or discipline as the health care provider.

(3) Whenever there are multiple defendants, the case against each health care provider may be reviewed by a separate panel, or at the discretion of the panel initially appointed or by stipulation of the parties, a single combined panel may review all the claims against all parties defendant.

(4) Three panel members from the health care provider's profession and three panel members from the state bar shall sit in review of each case.

(5) In those cases where the theory of respondeat superior or some other derivative theory of recovery is employed, two of the panel members shall be chosen from the individual health care provider's profession and one panel member shall be chosen from the profession of the health care provider named a respondent as employer, master, or principal.

(6) Any member shall disqualify himself from consideration of any case in which, by virtue of his circumstances, he feels his presence on the panel would be inappropriate, considering the purpose of the panel. The director may excuse a proposed panelist from serving.

(7) Whenever a party makes and files an affidavit that a panel member selected pursuant to this section cannot, according to the belief of the party making the affidavit, sit in review of the application with impartiality, that panel member may proceed no further. Another panel member must be selected by the health care provider's professional association, state licensing board, or the state bar, as the case may be. A party may not disqualify more than three panel members in this manner in any single malpractice claim, and the affidavit must be filed at least 20 days prior to the date of hearing.

History: En. 17-1309 by Sec. 9, Ch. 449,
L. 1977.

17-1310. Time and place of hearing. A date, time, and place for hearing shall be fixed by the director subject to 17-1305(6), and prompt notice thereof shall be given to the parties involved, the attorneys, and the

members of the panel. In no instance may the date set be more than 120 days after the transmittal by the director of the application for review unless the panel finds good cause exists for extending the period.

History: En. 17-1310 by Sec. 10, Ch. 449,
L. 1977.

17-1311. Hearing procedures. (1) At the time set for hearing, the claimant submitting the case for review shall be present and shall make a brief introduction of his case, including a resume of the facts constituting the alleged professional malpractice which he is prepared to prove. The health care provider against whom the claim is brought and his attorney may be present and may make an introductory statement of his case.

(2) Both parties may call witnesses to testify before the panel, which witnesses shall be sworn. Medical texts, journals, studies, and other documentary evidence relied upon by either party may be offered and admitted if relevant. Written statements of facts by treating health care providers may be reviewed.

(3) The hearing will be informal, and no official transcript may be made.

(4) At the conclusion of the hearing, the panel may take the case under advisement or may request that additional facts, records, witnesses, or other information be obtained and presented to it at a supplemental hearing, which shall be set for a date and time certain, not longer than 30 days from the date of the original hearing unless the attorney bringing the matter for review consents in writing to a longer period.

(5) Any supplemental hearing shall be held in the same manner as the original hearing, and the parties concerned and their attorneys may be present.

(6) No panel member may be called to testify in any proceeding concerning the deliberations, discussions, decisions, and internal proceedings of the panel.

(7) No statement made by any person during a hearing before the panel may be used as impeaching evidence in court.

(8) At least 10 days prior to the hearing, the director shall furnish to each panel member copies of all claims, briefs, medical records, and other documents the director considers necessary.

History: En. 17-1311 by Sec. 11, Ch. 449,
L. 1977.

17-1312. Panel deliberations and decisions. (1) At or prior to the time set for the hearing, the attorney members of the panel shall select a chairman who shall be an attorney and who shall preside over the panel deliberations. The deliberations of the panel are confidential. Upon consideration of all the relevant material, the panel shall decide:

(a) whether there is substantial evidence that the acts complained of occurred and that they constitute malpractice; and

(b) whether there is a reasonable medical probability that the patient was injured thereby.

(2) All votes of the panel on the questions for discussion shall be by secret ballot. The decision shall be by a majority vote of those voting members of the panel who sat on the entire case. The decision shall be communicated in writing to the parties and attorneys concerned, and a copy thereof shall be retained in the permanent files of the panel.

(3) The decision shall in every case be signed for the panel by the chairman and shall contain only the conclusions reached by a majority of its members and shall list the number of members, if any, dissenting therefrom. The majority may briefly explain the reasoning and the basis for their decision, and the dissenters may likewise explain the reason for disagreement.

(4) The report of the medical review panel is not admissible as evidence in any action subsequently brought in any court of law. The copy of the report shall be sent to the health care provider's professional licensing board.

(5) Panelists and witnesses are absolutely immune from civil liability for all communications, findings, opinions, and conclusions made in the course and scope of the duties prescribed by this act.

(6) The panel's decision is without administrative or judicial authority and is not binding upon any party. The panel may recommend an award, approve settlement agreements, and discuss the same, all in a manner not inconsistent with this section, and all such approved settlement agreements are binding on the parties.

History: En. 17-1312 by Sec. 12, Ch. 449,
L. 1977.

17-1313. Director—rules of procedure. The director, in consultation with the state bar of Montana and subject to approval of the supreme court, is authorized to adopt and publish rules of procedure necessary to implement and carry out the duties of the medical review panel. No rules may be adopted, however, which require a party to make a monetary payment as a condition to bringing a malpractice claim before the medical review panel.

History: En. 17-1313 by Sec. 13, Ch. 449,
L. 1977.

17-1314. Tolling of the statute of limitations. The running of the applicable limitation period in a malpractice claim is tolled upon receipt by the director of the application for review and does not begin again until 30 days after the panel's final decision is entered in the permanent files of the panel and a copy is served upon the complainant and his attorney by certified mail.

History: En. 17-1314 by Sec. 14, Ch. 449,
L. 1977.

17-1315. Maintenance of records. The director shall maintain records of all proceedings before the panel which must include the nature of the act or omissions complained of, a brief summary of the evidence expressed, the decision of the panel, and any majority or dissenting opinions filed. Any records which may identify any party to the proceedings may not be

made public and are not subject to subpoena, but are to be used solely for the purpose of compiling statistical data and facilitating ongoing studies of medical malpractice in Montana.

History: En. 17-1315 by Sec. 15, Ch. 449, L. 1977.

Saving Clause

Section 16 of Ch. 449, Laws 1977 read "This act does not apply to acts of malpractice occurring prior to its effective date."

Separability Clause

Section 17 of Ch. 449, Laws 1977 read "If a part of this act is invalid, all valid

parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Effective Date

Section 18 of Ch. 449, Laws 1977 provided the act should be effective upon its passage and approval. Approved April 19, 1977.

TITLE 18—DEBTOR AND CREDITOR

Chapter

3. Assignments for benefit of creditors, 18-318.
4. Debt adjusters, 18-401 to 18-403.
5. Consumer reporting agencies, 18-501 to 18-521.

CHAPTER 1—DEBTOR AND CREDITOR—DEFINITIONS AND GENERAL PROVISIONS

18-104. (8601) Payments in preference.

Contingent Liability

Debtor's sale of property to pay all creditors except one did not violate statute in light of fact that excepted debt was

contingent liability which debtor could reasonably anticipate would not become due and owing. *White v. Nollmeyer*, 151 M 387, 443 P 2d 873.

CHAPTER 3—ASSIGNMENTS FOR BENEFIT OF CREDITORS

Section

18-318. Assignment of real property.

18-318. (8629) Assignment of real property. When an assignment for the benefit of creditors embraces real property, it is subject to the provisions of 73-201 through 73-205, as well as to those of this chapter.

History: En. Sec. 4527, Civ. C. 1895; re-en. Sec. 6153, Rev. C. 1907; re-en. Sec. 8629, R. C. M. 1921; Sec. 1, Ch. 185, L. 1977. Cal. Civ. C. Sec. 3466. Field Civ. C. Sec. 1941.

Amendments

The 1977 amendment substituted "through" for "to" after "73-201"; and made a minor change in phraseology.

CHAPTER 4—DEBT ADJUSTERS

Section

18-401. Definitions.

18-402. Prohibition—penalty.

18-403. Exemptions.

18-401. Definitions. As used in this act the following words and terms shall have the following meanings unless the context clearly requires a different meaning. The singular shall include the plural and the masculine gender the feminine gender.

(1) "Person" means an individual, corporation, partnership, trust, firm, association or other legal entity.

(2) "Debt adjusting" means the making of a contract, express or implied, with a debtor whereby the debtor agrees to pay a certain amount of money or other thing of value periodically to the person engaged in the debt-adjusting business who shall, for a consideration, distribute the same among certain specified creditors in accordance with a plan agreed upon. The term includes debt adjustment, budget counseling, debt management or debt-pooling service or the holding of oneself out, by words of similar import, as providing services to debtors in the management of their debts and contracting with the debtor for a fee to (a) effect the ad-

justment, compromise, or discharge of any account, note, or other indebtedness, of the debtor, or (b) receive from the debtor and disperse to his creditors any money or other thing of value.

History: En. Sec. 1, Ch. 300, L. 1969.

adjusting when conducted for profit, making certain acts unlawful, and prescribing penalties therefor; excluding certain persons from the provisions of this act.

Title of Act

An act to prohibit the business of debt

18-402. Prohibition—penalty. No person shall engage in the business of debt adjusting. Whoever shall engage in the business of debt adjusting shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than five hundred dollars (\$500), or be imprisoned not more than six (6) months, or both.

History: En. Sec. 2, Ch. 300, L. 1969.

18-403. Exemptions. Section 18-402 shall not apply to:

- (1) those situations involving debt adjusting incurred incidentally in the lawful practice of law in this state;
- (2) banks and fiduciaries duly authorized and admitted to transact business in this state and performing credit and financial adjusting service in the regular course of their principal business;
- (3) title insurers and abstract companies, while doing an escrow business;
- (4) judicial officers or others acting under court orders;
- (5) nonprofit or charitable corporations or associations engaged in debt adjusting;
- (6) those situations involving debt adjusting incurred incidentally in connection with the lawful practice of a certified public accountant;
- (7) bona fide trade or mercantile associations in the course of arranging adjustment of debts with business establishments;
- (8) employers for their employees;
- (9) any person (other than a collection agency) whose maximum fees or charges for all services in adjusting the debtor's debts are 10% of the amounts as paid by the debtor;
- (10) any person who, at the request of a debtor, arranges for or makes a loan to the debtor, and who, at the authorization of the debtor, acts as an adjuster of the debtor's debts in the disbursement of the proceeds of the loan without compensation for the services rendered in adjusting the debts.

History: En. Sec. 3, Ch. 300, L. 1969;
amd. Sec. 2, Ch. 185, L. 1977.

Effective Date

Section 4 of Ch. 300, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 11, 1969.

Amendments

The 1977 amendment substituted "Section 18-402" for "This act" at the beginning of the section; and made minor changes in phraseology, punctuation and style.

CHAPTER 5—CONSUMER REPORTING AGENCIES

Section

- 18-501. Purpose.
- 18-502. Definitions and rules of construction.
- 18-503. Credit rating—property right.
- 18-504. Permissible purposes of reports.
- 18-505. Obsolete information.
- 18-506. Disclosure of investigative consumer reports.
- 18-507. Compliance procedures.
- 18-508. Adverse information.
- 18-509. Disclosures to governmental agencies.
- 18-510. Disclosures to consumers.
- 18-511. Conditions of disclosures to consumer.
- 18-512. Procedure in case of disputed accuracy.
- 18-513. Disclosures to consumers.
- 18-514. Public record information for employment purposes.
- 18-515. Requirements on users of consumer reports.
- 18-516. Actions available to consumer.
- 18-517. Civil liability for willful noncompliance.
- 18-518. Civil liability for negligent noncompliance.
- 18-519. Jurisdiction—venue.
- 18-520. Rules.
- 18-521. Violation.

18-501. Purpose. It is the purpose of this act to require that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information in accordance with the requirements of this act. The act's further purpose is to guard an individual's right to privacy guaranteed in Article II, section 10, of the Montana constitution.

History: En. 18-501 by Sec. 1, Ch. 547,	Title of Act
L. 1975.	An act to regulate consumer reporting agencies operating in Montana.

18-502. Definitions and rules of construction. (1) Definitions and rules of construction set forth in this section are applicable for the purposes of this act.

(2) The term "person" means any individual, partnership, corporation, trust, estate, co-operative, association, government or governmental subdivision or agency, or other entity.

(3) The term "consumer" means an individual.

(4) (a) The term "consumer report" means any written, oral or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for:

(i) credit or insurance to be used primarily for personal, family, or household purposes; or

(ii) employment purposes; or

(iii) other purposes authorized under section 18-504.

(b) The term does not include:

(i) any report containing information solely as to transactions or experiences between the consumer and the person making the report;

(ii) any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device; or

(iii) any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys his decision with respect to such request, if the third party advises the consumer of the name and address of the person to whom the request was made and such person makes the disclosures to the consumer required under section 18-515.

(5) The term "investigative consumer report" means a consumer report or portion thereof in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information. However, such information shall not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when such information was obtained directly from a creditor of the consumer or from the consumer.

(6) The term "consumer reporting agency" means any person which, for monetary fees, dues, or on a co-operative nonprofit basis regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

(7) The term "file," when used in connection with information on any consumer, means all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored.

(8) The term "employment purposes" when used in connection with a consumer report means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment or retention as an employee.

(9) The term "medical information" means information or records obtained, with the consent of the individual to whom it relates, from licensed physicians or medical practitioners, hospitals, clinics, or other medical or medically related facilities.

History: En. 18-502 by Sec. 2, Ch. 547,
L. 1975.

18-503. Credit rating—property right. A credit rating is a property right with full constitutional protection.

History: En. 18-503 by Sec. 3, Ch. 547,
L. 1975.

18-504. Permissible purposes of reports. A consumer reporting agency may furnish a consumer report under the following circumstances and no other:

(1) in response to the order of a court having jurisdiction to issue such an order;

(2) in accordance with the written instructions of the consumer to whom it relates;

(3) to a person which it has reason to believe:

(a) intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or

(b) intends to use the information for employment purposes; or

(c) intends to use the information in connection with the underwriting of insurance involving the consumer; or

(d) intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

(e) otherwise has a legitimate business need for the information in connection with a business transaction involving the consumer.

History: En. 18-504 by Sec. 4, Ch. 547,
L. 1975.

18-505. Obsolete information. No consumer reporting agency may make any consumer report containing any of the following items of information:

(1) bankruptcies which, from date of adjudication of the most recent bankruptcy, antedate the report by more than fourteen (14) years;

(2) suits and judgments which, from date of entry, antedate the report by more than seven (7) years or until the governing statute of limitations has expired, whichever is the longer period;

(3) paid tax liens which, from date of payment, antedate the report by more than seven (7) years;

(4) accounts placed for collection or charged to profit and loss which antedate the report by more than seven (7) years;

(5) records of arrest, indictment, or conviction of crime which from date of disposition, release, or parole, antedate the report by more than seven (7) years;

(6) any other adverse item of information which antedates the report by more than seven (7) years.

History: En. 18-505 by Sec. 5, Ch. 547,
L. 1975.

18-506. Disclosure of investigative consumer reports. (1) A person may not procure or cause to be prepared or distribute an investigative consumer report on any consumer unless:

(a) it is clearly and accurately disclosed to the consumer that an investigative consumer report including information as to his character, general reputation, personal characteristics, and mode of living, which-

ever are applicable, may be made, and such disclosure is made in a writing mailed, or otherwise delivered, to the consumer, not later than three (3) days after the date on which the report was first requested, and includes a statement informing the consumer of his right to request the additional disclosures provided for under subsection (2) of this section; or

(b) the report is to be used for employment purposes for which the consumer applied.

(2) Any person who procures or causes to be prepared an investigative consumer report on any consumer shall, upon written request made by the consumer within a reasonable period of time after the receipt by him of the disclosure required by subsection (1)(a), shall make a complete and accurate disclosure of the nature, scope, and substance of the investigation requested. This disclosure shall be made in a writing mailed, or otherwise delivered, to the consumer not later than five (5) days after the date on which the request for such disclosure was received from the consumer or such report was first requested, whichever is the latter.

(3) No person may be held liable for any violation of subsection (1) or (2) of this section if he shows by a preponderance of the evidence that at the time of the violation he maintained reasonable procedures to assure compliance with subsection (1) or (2).

History: En. 18-506 by Sec. 6, Ch. 547,
L. 1975.

18-507. Compliance procedures. (1) Every consumer reporting agency shall maintain reasonable procedures designed to avoid violations of sections 18-505 and 18-506 and to limit the furnishing of consumer reports to the purposes listed under section 18-504. These procedures shall require that prospective users of the information identify themselves, certify the purposes for which the information is sought, and certify that the information will be used for no other purpose. Every consumer reporting agency shall make a reasonable effort to verify the identity of a new prospective user and the uses certified by such prospective user prior to furnishing such user a consumer report. No consumer reporting agency may furnish a consumer report to any person if it has reasonable grounds for believing that the consumer report will not be used for a purpose listed in section 18-504.

(2) Whenever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates, and it shall maintain a record of all persons using the information and the source of each piece of information.

(3) When gathering information, a consumer reporting agency shall notify any person who furnishes information that he is liable to suit if the information is false or furnished with malice or willful intent to injure the consumer.

History: En. 18-507 by Sec. 7, Ch. 547,
L. 1975.

18-508. Adverse information. Whenever a consumer reporting agency prepares an investigative consumer report, no adverse information in

the consumer report (other than information which is a matter of public record) may be included in a subsequent consumer report unless such adverse information has been verified in the process of making such subsequent consumer report.

History: En. 18-508 by Sec. 8, Ch. 547,
L. 1975.

18-509. Disclosures to governmental agencies. Notwithstanding the provisions of section 18-504, a consumer reporting agency may furnish identifying information respecting any consumer, limited to his name, address, former addresses, places of employment, or former places of employment, to a governmental agency.

History: En. 18-509 by Sec. 9, Ch. 547,
L. 1975.

18-510. Disclosures to consumers. (1) Every consumer reporting agency shall, upon request and proper identification of any consumer, clearly and accurately disclose to the consumer:

- (a) the nature and substance of all information (except medical information) in its files on the consumer at the time of the request; and
- (b) the sources of the information.

(2) The requirements of subsection (1) respecting the disclosure of sources of information and the recipients of consumer reports furnished prior to July 1, 1975, do not apply to existing consumer reporting agencies except to the extent that the matter involved is contained in the files of the consumer reporting agency on that date.

History: En. 18-510 by Sec. 10, Ch. 547, 1, 1975" for "the effective date of this
L. 1975; amd. Sec. 3, Ch. 185, L. 1977. act" in subsection (2); and inserted "do
not apply to existing consumer reporting
agencies" in subsection (2).

Amendments

The 1977 amendment substituted "July

18-511. Conditions of disclosure to consumer. (1) A consumer reporting agency shall make the disclosures required under section 18-510 during normal business hours and on reasonable notice.

(2) The disclosures required under section 18-510 shall be made to the consumer:

(a) in person if he appears in person and furnishes proper identification; or

(b) by telephone if he has made a written request, with proper identification, for telephone disclosure and the toll charge, if any, for the telephone call is prepaid by or charged directly to the consumer.

(3) Any consumer reporting agency shall provide trained personnel to explain to the consumer any information furnished to him pursuant to section 18-510.

(4) The consumer shall be permitted to be accompanied by one other person of his choosing, who shall furnish reasonable identification. A consumer reporting agency may require the consumer to furnish a written

statement granting permission to the consumer reporting agency to discuss the consumer's file in such person's presence.

History: En. 18-511 by Sec. 11, Ch. 547,
L. 1975.

18-512. Procedure in case of disputed accuracy. (1) If the completeness or accuracy of any item of information contained in this file is disputed by a consumer, and the dispute is directly conveyed to the consumer reporting agency by the consumer, the consumer reporting agency shall within a reasonable period of time reinvestigate and record the current status of that information unless it has reasonable grounds to believe that the dispute by the consumer is frivolous or irrelevant. If after such reinvestigation such information is found to be inaccurate or can no longer be verified, the consumer reporting agency shall promptly delete the information and notify all users, of whom the consumer reporting agency has records, of the information's deletion. The users shall also delete the information.

(2) If the reinvestigation does not resolve the dispute, the consumer may file a brief statement setting forth the nature of the dispute.

(3) Whenever a statement of a dispute is filed, unless there is reasonable grounds to believe that it is frivolous or irrelevant, the consumer reporting agency shall, in any subsequent consumer report containing the information in question, clearly note that it is disputed by the consumer and provide either the consumer's statement or a clear and accurate codification or summary thereof. The consumer reporting agency shall notify the consumer of all users, of whom it has records, who have the disputed information.

History: En. 18-512 by Sec. 12, Ch. 547,
L. 1975.

18-513. Disclosures to consumers. A consumer reporting agency shall make all disclosures pursuant to section 18-510 and section 18-512 to the consumer, with appropriate fees to be established by the department of business regulation, in accordance with the Administrative Procedure Act.

History: En. 18-513 by Sec. 13, Ch. 547, **Cross-References**
L. 1975. Administrative Procedure Act, sec. 82-4201 et seq.

18-514. Public record information for employment purposes. A consumer reporting agency which furnishes a consumer report for employment purposes and which for that purpose compiles and reports items of information on consumers which are matters of public record and are likely to have an adverse effect upon a consumer's ability to obtain employment shall:

(1) at the time such public record information is reported to the user of such consumer report, notify the consumer of the fact that public record information is being reported by the consumer reporting agency, together with the name and address of the person to whom such information is being reported; or

(2) maintain strict procedures designed to ensure that whenever public record information which is likely to have an adverse effect on a consumer's ability to obtain employment is reported it is complete and up to date. For purposes of this paragraph, items of public record relating to arrests, indictments, convictions, suits, tax liens, and outstanding judgments shall be considered up to date if the current public record status of the item at the time of the report is reported.

History: En. 18-514 by Sec. 14, Ch. 547,
L. 1975.

18-515. Requirements on users of consumer reports. (1) Whenever credit or insurance for personal, family, or household purposes, or employment involving a consumer is denied or the charge for such credit or insurance is increased either wholly or partly because of information contained in a consumer report from a consumer reporting agency, the user of the consumer report shall so advise the consumer against whom such adverse action has been taken and supply the name and address of the consumer reporting agency making the report.

(2) Whenever credit for personal, family, or household purposes involving a consumer is denied or the charge for such credit is increased either wholly or partly because of information obtained from a person other than a consumer reporting agency bearing upon the consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, the user of such information shall, within a reasonable period of time, upon the consumer's written request for the reasons for such adverse action received within 60 days after the consumer learned of such adverse action, disclose the nature of the information to the consumer. The user of such information shall clearly and accurately disclose to the consumer his right to make such written request at the time such adverse action is communicated to the consumer.

(3) No person may be held liable for any violation of this section if he shows by a preponderance of the evidence that at the time of the alleged violation he maintained reasonable procedures to assure compliance with the provisions of subsections (1) and (2).

History: En. 18-515 by Sec. 15, Ch. 547, Amendments
L. 1975; amd. Sec. 4, Ch. 185, L. 1977.

The 1977 amendment made minor changes
in style and phraseology.

18-516. Actions available to consumer. (1) A consumer may bring action in the nature of defamation, invasion of privacy, or negligence with respect to the reporting of information against any person who fails to comply with this act.

(2) A person who fails to delete information or incorporate into a report a consumer's statement of dispute because he judges the dispute to be frivolous or irrelevant, is liable to suit.

(3) A person who furnishes information to a consumer reporting agency which is false, or who furnishes the information with malice or willful intent to injure the concerned consumer is liable to suit.

History: En. 18-516 by Sec. 16, Ch. 547,
L. 1975.

18-517. Civil liability for willful noncompliance. Any consumer reporting agency or user of information which willfully fails to comply with any requirement imposed under this act with respect to any consumer is liable to that consumer in an amount equal to the sum of:

- (1) any actual damages sustained by the consumer as a result of the failure;
- (2) such amounts of punitive damages as the court may allow; and
- (3) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorneys' fees as determined by the court.

History: En. 18-517 by Sec. 17, Ch. 547,
L. 1975.

18-518. Civil liability for negligent noncompliance. Any consumer reporting agency or user of information which is negligent in failing to comply with any requirement imposed under this title with respect to any consumer is liable to that consumer in an amount equal to the sum of:

- (1) any actual damages sustained by the consumer as a result of the failure;
- (2) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorneys' fees as determined by the court.

History: En. 18-518 by Sec. 18, Ch. 547,
L. 1975.

18-519. Jurisdiction—venue. A consumer may bring suit in any district court in Montana.

History: En. 18-519 by Sec. 19, Ch. 547,
L. 1975.

18-520. Rules. The department of business regulation shall enforce this act and promulgate rules necessary to carry out the intent of this act.

History: En. 18-520 by Sec. 20, Ch. 547,
L. 1975.

18-521. Violation. For the purposes of this act, a violation of this law would be in violation of chapter 4, Title 85, R. C. M. 1947.

History: En. 18-521 by Sec. 21, Ch. 547,
L. 1975. holding shall not affect or impair any of the remaining part or provisions of this act."

Separability Clause

Section 22, Ch. 547, Laws 1975 read
"The provisions of this act are severable
and if any part or provision thereof shall
be held void, the decisions of the court so

Cross-References

Unfair trade practices and consumer
protection, sec. 85-401 et seq.

TITLE 19—DEFINITIONS AND GENERAL PROVISIONS

Chapter

1. Definitions and construction of terms—holidays—other general provisions, 19-103, 19-103.1, 19-105, 19-107, 19-108, 19-123 to 19-125.

CHAPTER 1—DEFINITIONS AND CONSTRUCTION OF TERMS—HOLIDAYS— OTHER GENERAL PROVISIONS

Section

- 19-103. General definitional rules—definitions of certain words.
- 19-103.1. Printing defined.
- 19-105. Notice—actual and constructive.
- 19-107. Legal holidays and business days defined.
- 19-108. Provisions of school code excepted.
- 19-123. State gem stones.
- 19-124. Official state grass.
- 19-125. State fish.

19-102. (15) Words and phrases, how construed.

Concerted Activities

After more than forty years of construction by federal and state courts, "concerted activities" has acquired a peculiar

and appropriate meaning in labor law which includes strikes. *State, Department of Highways v. Public Employees Craft Council*, — M —, 529 P 2d 785.

19-103. (16) General definitional rules—definitions of certain words.

The following rules apply in this code: the present tense includes the future as well as the present; words used in the masculine gender include the feminine and neuter; the singular includes the plural and the plural, the singular; fractions of a year are computed by the number of months; thus, half a year is 6 months; fractions of a day are disregarded in computations which include more than 1 day and involve no questions of priority. Unless the context requires otherwise, the following definitions apply in the Revised Codes of Montana 1947:

- (1) "Property" means real and personal property.
- (2) "Real property" means lands, tenements, hereditaments, and possessory title to public lands.
- (3) "Personal property" means money, goods, chattels, things in action, and evidences of debt.
- (4) "Year" means a calendar year.
- (5) "Month" means a calendar month.
- (6) "State", when applied to the different parts of the United States, includes the District of Columbia and the territories.
- (7) "United States" includes the District of Columbia and the territories.
- (8) "Will" includes codicils.
- (9) "Writ" means an order in writing, issued in the name of the state or of a court or judicial officer.

(10) "Process" means a writ or summons issued in the course of judicial proceedings.

(11) "Vessel" when used in reference to shipping includes ships of all kinds, steamboats and steamships, canal boats, and every structure adapted to be navigated from place to place.

(12) "Peace officer" means any person described in 95-210.

(13) "Magistrate" means any officer described in 95-208.

(14) "Several" means two or more.

(15) "Third persons" means all persons who are not parties to the obligation or transaction concerning which the phrase is used.

(16) "Usage" means a reasonable and lawful public custom concerning transactions of the same nature as those which are to be affected thereby, existing at the place where the obligation is to be performed, and either known to the parties or so well established, general, and uniform that the parties must be presumed to have acted with reference thereto.

(17) "Usual" means according to usage.

(18) "Customary" means according to usage.

(19) "Willfully", when applied to the intent with which an act is done or omitted, denotes a purpose or willingness to commit the act or make the omission referred to. It does not require any intent to violate the law, to injure another, or to acquire any advantage.

(20) "Neglect", "negligence", "negligent", and "negligently" denote a want of the attention to the nature or probable consequences of the act or omission that a prudent man would ordinarily give in acting in his own concerns.

(21) "Corruptly" denotes a wrongful design to acquire or cause some pecuniary or other advantage to the person guilty of the act or omission referred to or to some other person.

(22) "Malice" and "maliciously" denote a wish to vex, annoy, or injure another person or an intent to do a wrongful act, established either by proof or presumption of law.

(23) "Knowingly" denotes only a knowledge that the facts exist which bring the act or omission within the provisions of this code. It does not require any knowledge of the unlawfulness of the act or omission.

(24) "Bribe" means anything of value or advantage, present or prospective, or any promise or undertaking to give anything of value or advantage, which is asked, given, or accepted with a corrupt intent to unlawfully influence the person to whom it is given in his action, vote, or opinion in any public or official capacity.

(25) "Seal", when the seal of a court or public officer is required by law to be affixed to any paper, includes an impression of the seal upon the paper alone or upon any substance attached to the paper capable of receiving a visible impression. The seal of a private person may be made in like manner, by the scroll of a pen, or by writing the word "seal" against his name.

(26) "Pledge", "mortgage", "conditional sale", "lien", "assignment", and like terms, when used in referring to a security interest in personal

property, include a corresponding type of security interest under the Uniform Commercial Code—Secured Transactions.

(27) "Person" includes a corporation as well as a natural person.

(28) "Writing" includes printing.

(29) "Oath" includes an affirmation or declaration.

(30) "Testify" includes every mode of oral statement under oath or affirmation.

(31) "Deposition" means a statement made under oath or affirmation and reduced to writing.

(32) "Signature" or "subscription" includes the mark of a person who cannot write if the person's name is written near the mark by another person who also signs his own name as a witness.

(33) "Judicial officers" means justices of the supreme court, judges of the district courts, justices of the peace, municipal judges, and city judges.

History: En. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R. C. M. 1921; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309, L. 1977. Cal. Pol. C. Sec. 17.

Amendments

The 1977 amendment substantially rewrote this section. For previous version, see parent volume.

Negligence

In action to recover damages for reduced yield of dryland alfalfa seed allegedly caused by negligence of defendants in allowing weeds from defendant's field to blow across fields of plaintiff during windstorm, trial court erred by not directing verdict for defendant since evidence failed to show breach of duty by defendant and therefore did not establish

prima facie case of negligence. *Mang v. Eliasson*, 153 M 431, 458 P 2d 777, explained in 156 M 477, 482 P 2d 559.

Person

The state was properly held to be a "person" where such construction of the statute was beneficial to the state and general public by permitting recovery of limited amounts paid through ADC for the support and necessities of children. *State, Department of Social & Rehabilitation Services v. Hultgren*, — M —, 541 P 2d 1211.

Property

Under this section, "property," as used in section 67-808, includes both real and personal property. *State ex rel. Tucker v. District Court of Thirteenth Judicial District in and for Stillwater County*, 155 M 202, 468 P 2d 773.

19-103.1. Printing defined. As used in the laws of the state of Montana, printing is the act of reproducing a design on a surface by any process.

History: En. Sec. 1, Ch. 267, L. 1969; amd. Sec. 11, Ch. 100, L. 1973.

Title of Act

An act to define printing in Montana as an act of reproducing a design on a surface by any process.

Amendments

The 1973 amendment deleted "constitution and" preceding "laws of the state."

19-105. (8780) Notice—actual and constructive. Notice is:

- (1) actual whenever it consists of express information of a fact;
- (2) constructive whenever it is imputed by law.

History: En. Sec. 4666, Civ. C. 1895; re-en. Sec. 6228, Rev. C. 1907; re-en. Sec. 8780, R. C. M. 1921; amd. Sec. 4, Ch. 309, L. 1977. Cal. Civ. C. Sec. 18. Based on Field Civ. C. Secs. 2009, 2010.

Amendments

The 1977 amendment substituted "actual

whenever it consists of express information" in subdivision (1) for "Actual—which consists in express information"; substituted "constructive whenever it is imputed" in subdivision (2) for "Constructive—which is imputed"; and made minor changes in style and punctuation.

19-107. (10) Legal holidays and business days defined. The following are legal holidays in the state of Montana:

- (1) Each Sunday.
- (2) New Year's Day, January 1.
- (3) Lincoln's Birthday, February 12.
- (4) Washington's Birthday, the third Monday in February.
- (5) Memorial Day, the last Monday in May.
- (6) Independence Day, July 4.
- (7) Labor Day, the first Monday in September.
- (8) Columbus Day, the second Monday in October.
- (9) Veterans' Day, November 11.
- (10) Thanksgiving Day, the fourth Thursday in November.
- (11) Christmas Day, December 25.
- (12) State general election day.

If any of the above-enumerated holidays (except Sunday) fall upon a Sunday, the Monday following is a holiday. All other days are business days.

Whenever any bank in the state of Montana elects to remain closed and refrains from the transaction of business on Saturday, pursuant to authority for permissive closing on Saturdays by virtue of the laws of the state, legal holidays for such bank during the year of such election are hereby limited to the following holidays:

- (1) Each Sunday.
- (2) New Year's Day, January 1.
- (3) Memorial Day, the last Monday in May.
- (4) Independence Day, July 4.
- (5) Labor Day, the first Monday in September.
- (6) Thanksgiving Day, the fourth Thursday in November.
- (7) Christmas Day, December 25.

(8) On such days as banks are closed in accordance with sections 5-1058 to 5-1062.

Any bank practicing Saturday closing in compliance with law may remain closed and refrain from the transaction of business on Saturdays, notwithstanding that a Saturday may coincide with a legal holiday other than one of the holidays designated above for banks practicing Saturday closing in compliance with law, and provided further that it shall be optional for any bank, whether practicing Saturday closing or not, to observe as a holiday and to be closed on any day upon which a general election is held throughout the state of Montana and on Veterans' Day, November 11, and on any local holiday which historically or traditionally or by proclamation of a local executive official or governing body is established as a day upon which businesses are generally closed in the community in which the bank is located.

History: Ap. p. Sec. 10, Pol. C. 1895; re-en. Sec. 10, Rev. C. 1907; amd. Sec. 1, Ch. 21, L. 1921; re-en. Sec. 10, R. C. M. 1921; amd. Sec. 1, Ch. 209, L. 1955; amd. Sec. 1, Ch. 6, L. 1965; amd. Sec. 1, Ch. 89, L. 1969; amd. Sec. 6, Ch. 32, L. 1971; amd.

Sec. 1, Ch. 16, L. 1974. Cal. Pol. C. Secs. 10-11.

Amendments

The 1969 amendment revised and reworded the section to enumerate the lists

of legal and authorized bank holidays and made Memorial Day the last Monday in May instead of May thirtieth, Columbus Day the second Monday in October instead of October twelfth, and Veterans' Day the fourth Monday in October instead of November eleventh.

The 1971 amendment added to the list of holidays for banks closed on Saturdays subdivision (8) relating to days banks are closed during emergencies and special observances.

The 1974 amendment changed Veterans' Day from the fourth Monday in October

to November 11; made corresponding changes in language throughout the section; and substituted "5-1058 to 5-1062" in subdivision (8) of the second paragraph for "1 through 5 of this act."

Effective Date

Section 2 of Ch. 89, Laws 1969 read "This act is effective January 1, 1971."

Cross-References

Closing of banks in emergency or for special observances, secs. 5-1058 to 5-1062.

19-108. (11) Provisions of school code excepted. Nothing contained in section 19-107 defining legal holidays shall be deemed to amend or change the provisions of sections 75-7406 and 75-7407 said sections being hereby expressly declared to define legal holidays for school purposes only.

History: En. Sec. 2, Ch. 21, L. 1921; re-en. Sec. 11, R. C. M. 1921; amd. Sec. 1, Ch. 240, L. 1975.

Amendments

The 1975 amendment substituted "contained in section 19-107 defining legal hol-

idays" for "herein contained"; substituted the reference to sections 75-7406 and 75-7407 for "section 1300 of chapter 76 of the laws of the thirteenth legislative assembly of Montana of 1913 (section 75-2204)"; and made a minor change in phraseology.

19-112. (527) Seals of executive officers.

Compiler's Notes

Section 3, Ch. 468, Laws 1977, deleted reference to "state treasurer" in this section.

19-117, 19-118. (530.2, 530.3) Repealed.

Repeal

Sections 19-117 and 19-118 (Secs. 1, 2, Ch. 9, L. 1927), relating to the official

map of the state of Montana, were repealed by Sec. 24, Ch. 315, Laws of 1974.

19-123. State gem stones. The sapphire and the Montana agate are the official Montana state gem stones.

History: En. Sec. 1, Ch. 20, L. 1969.

Montana agate the official Montana state gem stones.

Title of Act

An act naming the sapphire and the

19-124. Official state grass. The grass known as bluebunch wheatgrass, *agropyron spicatum* (pursh), shall be designated and declared to be the official grass of the state of Montana.

History: En. 19-124 by Sec. 1, Ch. 378, L. 1973.

Title of Act

An act establishing bluebunch wheatgrass as the official grass for the state of Montana.

19-125. State fish. The blackspotted cutthroat trout (*Salmo clarki*) is the official Montana state fish.

History: En. Sec. 1, Ch. 6, L. 1977.

Title of Act

An act naming the blackspotted cutthroat trout as the state fish.

TITLE 20—DEPOSIT

CHAPTER 2—DEPOSIT FOR KEEPING—GRATUITOUS DEPOSIT

20-208. (7655) Extent of his liability for negligence.

Measure of Damages

Measure of damages in action to recover for sailing sloop destroyed by fire in bailee's warehouse was the reasonable

value of the boat based upon opinion testimony of both parties in action. *Aetna Life & Casualty Co. v. Stan-Craft Corp.*, 159 M 474, 499 P 2d 776.

CHAPTER 3—DEPOSIT FOR KEEPING—STORAGE—UNCLAIMED PROPERTY

20-302. (7661) Degree of care required of depositary for hire.

Ordinary Care

A bailee for hire must use at least ordinary care for the preservation of the things stored; if the article placed in storage is in good condition and returned damaged or not returned at all, the pre-

sumption is that the bailee was negligent and the burden is upon the bailee to prove that he used due care. *Aetna Life & Casualty Co. v. Stan-Craft Corp.*, 159 M 474, 499 P 2d 776.

TITLE 21—DIVORCE

Chapter

1. Dissolution of marriage—divorce, Repealed—Section 45, Chapter 536, Laws of 1975.

CHAPTER 1—DISSOLUTION OF MARRIAGE—DIVORCE

(Repealed—Section 45, Chapter 536, Laws of 1975, eff. Jan. 1, 1976)

21-101 to 21-150. (5734 to 5781) Repealed.

Repeal

Sections 21-101 to 21-150 (Ap. p. Secs. 6, 7, p. 431, Bannack Stat.; Sec. 1, p. 45, L. 1876; Secs. 130 to 145, 160 to 177, 190 to 203; Secs. 1, 2, Ch. 118, L. 1907; Sec. 1, Ch. 22, L. 1931; Sec. 1, Ch. 69, L. 1935; Secs. 1, 2, Ch. 65, L. 1937; Sec. 1, Ch. 136, L. 1945; Secs. 1, 2, Ch. 185, L. 1945; Sec.

1, Ch. 19, L. 1949; Sec. 1, Ch. 169, L. 1953; Sec. 1, Ch. 167, L. 1963; Sec. 1, Ch. 168, L. 1963; Sec. 1, Ch. 84, L. 1973), relating to dissolution of marriage and divorce, were repealed by Sec. 45, Ch. 536, Laws 1975, eff. Jan. 1, 1976. For new law, see secs. 48-301 to 48-341.

TITLE 22—DOWER

Chapter

1. Dower, Repealed—Section 2, Chapter 365, Laws of 1974.

CHAPTER 1—DOWER

(Repealed—Section 2, Chapter 365, Laws of 1974, eff. July 1, 1975)

22-101 to 22-117. (5813 to 5829) Repealed.

Repeal

Sections 22-101 to 22-117 (Secs. 1 to 9, 18 to 22, pp. 63 to 65, 68, L. 1876; Secs. 228 to 243, Civ. C. 1895; Sec. 1, Ch. 231, L. 1955), relating to dower, were repealed by Sec. 2, Ch. 365, Laws of 1974, eff. July

1, 1975. See Montana Uniform Probate Code, elective share of surviving spouse, secs. 91A-2-201 to 91A-2-207. See also, dower and curtesy abolished, sec. 91A-2-112.

TITLE 23—ELECTIONS

Chapter

1. Time of holding elections—proclamations, Repealed—Section 248, Chapter 368, Laws of 1969.
2. Publication of questions submitted to popular vote, Repealed—Section 248, Chapter 368, Laws of 1969.
3. Qualifications and privileges of electors, Repealed—Section 248, Chapter 368, Laws of 1969.
4. Election precincts, Repealed—Section 248, Chapter 368, Laws of 1969.
5. Registration of electors, Repealed—Section 248, Chapter 368, Laws of 1969.
6. Judges and clerks of elections, Repealed—Section 248, Chapter 368, Laws of 1969.
7. Election supplies, Repealed—Section 248, Chapter 368, Laws of 1969.
8. Nomination of candidates for special elections by convention or primary meetings or by electors, Repealed—Section 248, Chapter 368, Laws of 1969.
9. Party nominations by direct vote—the direct primary, Repealed—Section 11, Chapter 156, Laws of 1965; Section 248, Chapter 368, Laws of 1969.
10. Political parties, Repealed—Section 8, Chapter 266, Laws of 1955; Section 11, Chapter 156, Laws of 1965; Section 248, Chapter 368, Laws of 1969.
11. Ballots, preparation and form, Repealed—Section 13, Chapter 194, Laws of 1967; Section 248, Chapter 368, Laws of 1969.
12. Conducting elections—the polls—voting and ballots, Repealed—Section 248, Chapter 368, Laws of 1969.
13. Voting by absent electors, Repealed—Section 248, Chapter 368, Laws of 1969.
14. Voting by absent electors in United States service, Repealed—Section 248, Chapter 368, Laws of 1969.
15. Registration of electors absent from county of their residence, Repealed—Section 248, Chapter 368, Laws of 1969.
16. Voting machines—conduct of election when used, Repealed—Section 248, Chapter 368, Laws of 1969.
17. Election returns, Repealed—Section 248, Chapter 368, Laws of 1969.
18. Canvass of election returns—results and certificates, Repealed—Section 13, Chapter 194, Laws of 1967; Section 248, Chapter 368, Laws of 1969.
19. Failure of elections—proceedings on tie vote, Repealed—Section 248, Chapter 368, Laws of 1969.
20. Nonpartisan nomination and election of judges of supreme court and district courts, Repealed—Section 3, Chapter 20, Laws of 1959; Section 248, Chapter 368, Laws of 1969.
21. Presidential electors, how chosen—duties, Repealed—Section 248, Chapter 368, Laws of 1969.
22. Members of Congress—elections and vacancies, Repealed—Section 248, Chapter 368, Laws of 1969.
23. Recount of ballots—results, Repealed—Section 248, Chapter 368, Laws of 1969.
24. Conventions to ratify proposed amendments to constitution of the United States, Repealed—Section 248, Chapter 368, Laws of 1969.
25. Electronic voting systems, Repealed—Section 248, Chapter 368, Laws of 1969.
26. Definitions and general provisions, 23-2601 to 23-2605.
27. Qualifications and privileges of electors, 23-2701, 23-2704, 23-2705.
28. Publication of questions submitted to popular vote, 23-2801, 23-2802.
29. Proclamations and publications, 23-2901 to 23-2904.
30. Registration of electors, 23-3001 to 23-3004.1, 23-3005 to 23-3020, 23-3022 to 23-3024, 23-3026 to 23-3028.
31. Election precincts, 23-3101 to 23-3103.
32. Judges and clerks of elections, 23-3201 to 23-3207.
33. Primary elections and nominations by certificate, 23-3301 to 23-3316, 23-3318, 23-3318.1, 23-3319 to 23-3328.
34. Political parties, committeemen and committees, 23-3401 to 23-3407.
35. Election supplies and ballots, 23-3501 to 23-3517.
36. Conduct of elections—the polls—voting and ballots, 23-3601 to 23-3618.
37. Absentee voting and registration, 23-3701 to 23-3716, 23-3718 to 23-3721, 23-3724.
38. Voting machines, 23-3801 to 23-3819, 23-3822.
39. Electronic voting systems, 23-3901 to 23-3907.
40. Canvass of votes—returns and certificates, 23-4001 to 23-4019.
41. Recounts, 23-4101 to 23-4122.

42. Contests of bond elections, 23-4201, 23-4202.
43. Presidential electors, 23-4301 to 23-4307.
44. Members of Congress—elections and vacancies, 23-4401 to 23-4403, 23-4405.
45. Nonpartisan nomination and election of governor, 23-4501 to 23-4510.2.
46. Conventions to ratify amendments to constitution of the United States, 23-4601 to 23-4611.
47. Election frauds and offenses—Corrupt Practices Act, 23-4737, 23-4744, 23-4746, 23-4757 to 23-4760, 23-4762 to 23-4767, 23-4770, 23-4771, 23-4776 to 23-4792, 23-4794 to 23-4796, 23-47-101 to 23-47-139.
48. Constitutional conventions, 23-4801, 23-4802.
49. Public Campaign Fund Act, 23-4901 to 23-4906.

CHAPTER 1

TIME OF HOLDING ELECTIONS—PROCLAMATIONS

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-101 to 23-106. (531 to 536) Repealed.

Repeal

Sections 23-101 to 23-106 (Secs. 1150, 1151, 1160 to 1163, Pol. C. 1895), relating to the time of holding elections and election proclamations, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 2

PUBLICATION OF QUESTIONS SUBMITTED TO POPULAR VOTE

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-201, 23-202. (537.1, 538) Repealed.

Repeal

Sections 23-201 and 23-202 (Sec. 1, Ch. 130, L. 1919; Sec. 1, Ch. 62, L. 1927; Sec. 1, Ch. 104, L. 1945), relating to publication of proposed constitutional amendments and questions to be submitted to the people of the county or municipality, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 3

QUALIFICATIONS AND PRIVILEGES OF ELECTORS

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-301 to 23-311. (539 to 544) Repealed.

Repeal

Sections 23-301 to 23-311 (Secs. 1180, 1181, 1183 to 1185, 1188, Pol. C. 1895; Sec. 1, Ch. 44, L. 1941; Secs. 1 to 4, Ch. 28, L. 1945; Sec. 1, Ch. 92, L. 1949; Sec. 1, Ch. 64, L. 1959), relating to the requirement for elections by ballot, qualifications of electors, privileges of electors, and the definition of "taxpayers," were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 4

ELECTION PRECINCTS

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-401 to 23-407. (545 to 551) Repealed.

Repeal

Sections 23-401 to 23-407 (Secs. 1243, 1244, Pol. C. 1895; Secs. 2 to 6, Ch. 113, L. 1911; Secs. 2 to 6, Ch. 74, L. 1913; Secs. 2 to 6, Ch. 122, L. 1915; Sec. 1, Ch. 25, L. 1929), relating to election precincts, ward boundaries, and designation of places for holding elections, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 5

REGISTRATION OF ELECTORS

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-501, 23-501.1, 23-502 to 23-534. (553 to 562, 566 to 586) Repealed.

Repeal

Sections 23-501, 23-501.1, 23-502 to 23-534 (Secs. 1, 7, 12, 17 to 24, 26, 29, 30, 32, 35 to 39, Ch. 113, L. 1911; Secs. 1, 7, 12, 15, 17 to 24, 26, 29, 30, 32, 35 to 40, Ch. 74, L. 1913; Secs. 1, 7 to 36, Ch. 122, L. 1915; Sec. 1, Ch. 38, L. 1917; Sec. 1, Ch. 29, L. 1919; Sec. 1, Ch. 58, L. 1919; Secs. 1 to 4, Ch. 97, L. 1919; Sec. 1, Ch. 235, L. 1921; Secs. 1, 2, Ch. 61, L. 1933; Sec. 1, Ch. 25, L. 1935; Sec. 1, Ch.

71, L. 1935; Sec. 1, Ch. 147, L. 1937; Secs. 1 to 6, Ch. 172, L. 1937; Sec. 1, Ch. 51, L. 1941; Sec. 1, Ch. 144, L. 1941; Secs. 1, 2, Ch. 177, L. 1943; Sec. 1, Ch. 167, L. 1945; Sec. 1, Ch. 83, L. 1953; Secs. 1, 2, Ch. 80, L. 1955; Secs. 1, 2, Ch. 18, L. 1959; Secs. 2 to 4, Ch. 64, L. 1959; Secs. 1 to 5, Ch. 98, L. 1965; Secs. 3, 4, Ch. 156, L. 1965; Secs. 1, 2, Ch. 139, L. 1967), relating to registration of electors, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 6

JUDGES AND CLERKS OF ELECTIONS

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-601 to 23-604, 23-604.1, 23-604.2, 23-605 to 23-612. (587 to 597) Repealed.

Repeal

Sections 23-601 to 23-604, 23-604.1, 23-604.2, 23-605 to 23-612 (Secs. 6, 7, p. 461, Cod. Stat. 1871; Secs. 1173, 1260 to 1269, Pol. C. 1895; Sec. 1, Ch. 101, L. 1917; Secs. 1, 2, Ch. 43, L. 1923; Sec. 1, Ch. 61, L. 1937; Sec. 1, Ch. 85, L. 1941; Secs. 1, 2, Ch. 40, L. 1943; Sec. 1, Ch.

49, L. 1945; Sec. 2, Ch. 167, L. 1945; Sec. 1, Ch. 117, L. 1947; Sec. 1, Ch. 12, L. 1951; Sec. 1, Ch. 14, L. 1957; Sec. 1, Ch. 210, L. 1957; Secs. 1, 2, Ch. 99, L. 1961; Sec. 1, Ch. 46, L. 1963), relating to judges and clerks of elections, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 7

ELECTION SUPPLIES

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-701 to 23-713. (598, 600 to 611) Repealed.

Repeal

Sections 23-701 to 23-713 (Sec. 18, p. 463, Cod. Stat. 1871; Sec. 20, p. 140, L. 1889; Secs. 1174, 1270 to 1273, 1300, 1302, 1303, 1356, Pol. C. 1895; Sec. 1, Ch. 88, L. 1907; Secs. 1 to 4, Ch. 12, L. 1915;

Sec. 5, Ch. 64, L. 1959), relating to poll-books, ballots, ballot boxes, printed instructions to electors, return forms, and other election supplies, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 8

NOMINATION OF CANDIDATES FOR SPECIAL ELECTIONS BY CONVENTION OR PRIMARY MEETINGS OR BY ELECTORS

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-801 to 23-820. (612 to 618.1, 619 to 630) Repealed.

Repeal

Sections 23-801 to 23-820 (Secs. 1310 to 1317, 1319, 1320, 1322, 1330 to 1336,

Pol. C. 1895; Secs. 2 to 9, 11, 12, 19, pp. 135 to 138, 140, L. 1889; Secs. 1 to 3, pp. 115, 116, L. 1901; Sec. 1, Ch. 15, L. 1925; Sec. 1,

Ch. 58, L. 1925; Sec. 1, Ch. 64, L. 1925; Sec. 1, Ch. 28, L. 1933; Sec. 1, Ch. 104, L. 1943; Sec. 1, Ch. 105, L. 1943; Sec. 1, Ch. 26, L. 1945; Sec. 1, Ch. 259, L. 1947; Sec. 1, Ch. 160, L. 1949; Secs. 5, 6, Ch.

156, L. 1965; Sec. 1, Ch. 86, L. 1967; Sec. 3, Ch. 194, L. 1967), relating to nominations for special elections, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 9

PARTY NOMINATIONS BY DIRECT VOTE—THE DIRECT PRIMARY

(Repealed—Section 11, Chapter 156, Laws of 1965; Section 248, Chapter 368, Laws of 1969)

23-901 to 23-936. (631 to 641, 644 to 652, 654 to 663, 665 to 670) Repealed.

Repeal

Sections 23-901 to 23-936 (Secs. 1 to 10, 13 to 21, 23 to 29, 31 to 38, Initiative Measure Nov. 1912; Secs. 1, 3, Ch. 88, L. 1921; Sec. 1, Ch. 1, Ex. L. 1921; Secs. 1, 2, Ch. 133, L. 1923; Secs. 1, 2, Ch. 12, L. 1925; Sec. 1, Ch. 118, L. 1925; Sec. 1, Ch. 159, L. 1925; Sec. 1, Ch. 3, L. 1927; Sec. 1, Ch. 7, L. 1927; Sec. 1, Ch. 14, L. 1927; Sec. 1, Ch. 98, L. 1927; Sec. 1, Ch. 125, L. 1927; Sec. 1, Ch. 34, L. 1929; Sec. 1, Ch. 67, L. 1929; Sec. 1, Ch. 6, L. 1933; Sec. 1, Ch. 62, L. 1933; Sec. 1, Ch. 181, L. 1937; Sec. 1, Ch. 84, L. 1939;

Sec. 1, Ch. 27, L. 1945; Sec. 1, Ch. 34, L. 1945; Sec. 3, Ch. 167, L. 1945; Sec. 1, Ch. 75, L. 1949; Sec. 1, Ch. 64, L. 1951; Secs. 1, 2, Ch. 6, L. 1953; Sec. 1, Ch. 8, L. 1953; Sec. 12, Ch. 214, L. 1953; Sec. 1, Ch. 19, L. 1955; Sec. 2, Ch. 207, L. 1955; Secs. 1 to 3, Ch. 266, L. 1955; Sec. 6, Ch. 64, L. 1959; Sec. 1, Ch. 219, L. 1959; Secs. 1, 2, Ch. 274, L. 1959; Sec. 1, Ch. 38, L. 1961; Secs. 2, 7, Ch. 156, L. 1965; Sec. 1, Ch. 151, L. 1967; Secs. 4, 5, Ch. 194, L. 1967), relating to primary elections, were repealed by Sec. 11, Ch. 156, Laws 1965; Sec. 248, Ch. 368, Laws 1969.

CHAPTER 10

POLITICAL PARTIES

(Repealed—Section 8, Chapter 266, Laws of 1955; Section 11, Chapter 156, Laws of 1965; Section 248, Chapter 368, Laws of 1969)

23-1001 to 23-1009. (673.1 to 673.8) Repealed.

Repeal

Sections 23-1001 to 23-1009 (Secs. 1 to 8, Ch. 126, L. 1927; Sec. 2, Ch. 64, L. 1951; Sec. 1, Ch. 55, L. 1953; Secs. 13 to 16, Ch. 214, L. 1953; Secs. 4 to 7, Ch.

266, L. 1955; Sec. 3, Ch. 274, L. 1959; Secs. 1, 8, Ch. 156, L. 1965), relating to political parties, were repealed by Sec. 8, Ch. 266, Laws 1955; Sec. 11, Ch. 156, Laws 1965; Sec. 248, Ch. 368, Laws 1969.

CHAPTER 11

BALLOTS, PREPARATION AND FORM

(Repealed—Section 13, Chapter 194, Laws of 1967; Section 248, Chapter 368, Laws of 1969)

23-1101 to 23-1117. (677 to 681, 683 to 687) Repealed.

Repeal

Sections 23-1101 to 23-1107 (Secs. 1, 17, pp. 135, 139, L. 1889; Secs. 1350 to 1355, Pol. C. 1895; Sec. 1354, p. 117, L. 1901; Secs. 2, 3, Ch. 88, L. 1907; Sec. 1, Ch. 16, L. 1925; Sec. 1, Ch. 203, L. 1937; Secs. 1, 2, Subds. A to F, Ch. 81, L. 1939; Sec. 1, Ch. 170, L. 1939; Sec. 1, Subds. A to

F, Ch. 141, L. 1947; Sec. 1, Subds. A to F, Ch. 79, L. 1949; Secs. 1 to 3, Ch. 72, L. 1953; Sec. 9, Ch. 156, L. 1965; Secs. 6, 7, Ch. 194, L. 1967), relating to form, printing and distribution of ballots, were repealed by Sec. 13, Ch. 194, Laws 1967; Sec. 248, Ch. 368, Laws 1969.

CHAPTER 12

CONDUCTING ELECTIONS—THE POLLS—VOTING AND BALLOTS

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-1201 to 23-1228. (688 to 714) Repealed.**Repeal**

Sections 23-1201 to 23-1228 (Sec. 11, p. 462, Cod. Stat. 1871; Secs. 22 to 27, pp. 141, 142, L. 1889; Secs. 1290 to 1292, 1358, 1360 to 1379, Pol. C. 1895; Secs. 1357 to 1359, 1361, 1364, pp. 118 to 120, L. 1901; Secs. 4, 5, Ch. 88, L. 1907; Sec. 26, Ch. 113, L. 1911; Sec. 26, Ch. 74, L. 1913; Sec. 26, Ch. 122, L. 1915; Sec. 1, Ch. 3, L. 1935; Sec. 1, Ch. 2, L. 1937;

Sec. 1, Ch. 111, L. 1937; Sec. 1, Ch. 207, L. 1955; Sec. 1, Ch. 32, L. 1959; Secs. 7, 8, Ch. 64, L. 1959; Sec. 1, Ch. 77, L. 1961), relating to voting time allowance, time of and proclamations on opening and closing of polls, furnishing and arrangement of polling places, methods and manner of voting, and challenges, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 13

VOTING BY ABSENT ELECTORS

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-1301 to 23-1302(2), 23-1303, 23-1303.1, 23-1304 to 23-1321. (715 to 735) Repealed.**Repeal**

Sections 23-1301 to 23-1302(2), 23-1303, 23-1303.1, 23-1304 to 23-1321 (Secs. 1 to 20, Ch. 110, L. 1915; Secs. 1 to 21, Ch. 155, L. 1917; Secs. 1 to 3, Ch. 151, L. 1923; Sec. 1, Ch. 32, L. 1941; Secs. 1 to 17, Ch. 234, L. 1943; Sec. 1, Ch. 60, L. 1953; Secs. 1, 2, Ch. 104, L. 1953; Sec. 1, Ch. 152, L.

1955; Secs. 3 to 5, Ch. 18, L. 1959; Secs. 9 to 11, Ch. 64, L. 1959; Secs. 1 to 3, Ch. 216, L. 1959; Secs. 1 to 3, Ch. 108, L. 1963; Secs. 1, 2, Ch. 124, L. 1963), relating to voting by absent or physically incapacitated electors were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 14

VOTING BY ABSENT ELECTORS IN UNITED STATES SERVICE

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-1401 to 23-1406. Repealed.**Repeal**

Sections 23-1401 to 23-1406 (Secs. 1 to 6, Ch. 99, L. 1943; Secs. 6 to 10, Ch.

18, L. 1959), relating to voting by absent electors in United States service, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 15

REGISTRATION OF ELECTORS ABSENT FROM
COUNTY OF THEIR RESIDENCE

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-1501 to 23-1503. Repealed.**Repeal**

Sections 23-1501 to 23-1503 (Secs. 1 to 3, Ch. 190, L. 1943), relating to registra-

tion of electors absent from county of residence, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 16

VOTING MACHINES—CONDUCT OF ELECTION WHEN USED

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-1601 to 23-1608, 23-1608A, 23-1609 to 23-1618. (757 to 773) Repealed.**Repeal**

Sections 23-1601 to 23-1608, 23-1608A, 23-1609 to 23-1618 (Secs. 1 to 17, Ch. 168, L. 1907; Sec. 1, Ch. 6, L. 1909; Secs. 1 to 3, Ch. 99, L. 1909; Secs. 1 to 4, Ch. 246, L. 1921; Sec. 1, Ch. 31, L. 1935; Secs. 1 to 4, Ch. 19, L. 1943; Sec. 1, Ch. 26, L.

1947; Secs. 1, 2, Ch. 20, L. 1959; Sec. 16, Ch. 42, L. 1963; Sec. 1, Ch. 57, L. 1963; Sec. 10, Ch. 156, L. 1965), relating to examinations and specifications of voting readiness and the conduct of election when used, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 17

ELECTION RETURNS

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-1701 to 23-1715. (774 to 782, 784 to 789) Repealed.**Repeal**

Sections 23-1701 to 23-1715 (Secs. 22 to 25, p. 380, Bannack Stat.; Sec. 30, p. 143, L. 1889; Secs. 1400 to 1408, 1410 to 1415, Pol. C. 1895; Secs. 6 to 10, Ch. 88, L. 1907; Sec. 1, Ch. 112, L. 1937; Sec. 1, Ch. 65, L. 1943; Secs. 1 to 3, Ch. 23,

L. 1945; Secs. 12 to 16, Ch. 64, L. 1959; Sec. 17, Ch. 42, L. 1963), relating to canvass of votes by judges of elections and the disposition and custody of returns were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 18

CANVASS OF ELECTION RETURNS—RESULTS AND CERTIFICATES

(Repealed—Section 13, Chapter 194, Laws of 1967; Section 248, Chapter 368, Laws of 1969)

23-1801 to 23-1819. (790 to 808) Repealed.**Repeal**

Sections 23-1801 to 23-1819 (Secs. 2 to 15, 17, 18, pp. 299 to 305, L. 1891; Secs. 1170, 1430 to 1444, 1448 to 1450, Pol. C. 1895; Sec. 1, Ch. 84, L. 1909; Sec. 1, Ch. 55, L. 1949; Sec. 1, Ch. 50, L. 1959; Sec. 1, Ch. 87, L. 1959; Sec. 16, Ch. 97, L. 1961; Sec. 18, Ch. 42, L. 1963;

Secs. 8, 9, Ch. 194, L. 1967), relating to the county and state canvass of returns, the issuance of certificates and commissions, and the duty of the secretary of state to print the election laws, were repealed by Sec. 13, Ch. 194, Laws 1967; Sec. 248, Ch. 368, Laws 1969.

CHAPTER 19

FAILURE OF ELECTIONS—PROCEEDINGS ON TIE VOTE

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-1901 to 23-1904. (809 to 812) Repealed.**Repeal**

Sections 23-1901 to 23-1904 (Sec. 16, p. 305, L. 1891; Secs. 1171, 1445 to 1447, Pol. C. 1895; Sec. 10, Ch. 194, L. 1967),

relating to tie votes for representatives in Congress, state officers, and judicial officers, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 20

NONPARTISAN NOMINATION AND ELECTION OF JUDGES OF
SUPREME COURT AND DISTRICT COURTS(Repealed—Section 3, Chapter 20, Laws of 1959; Section 248, Chapter 368,
Laws of 1969)**23-2001 to 23-2014. (812.1 to 812.11, 812.13 to 812.15) Repealed.****Repeal**

Sections 23-2001 to 23-2014 (Secs. 1 to 11, 13 to 15, Ch. 182, L. 1935; Secs. 2 to 4, Ch. 229, L. 1961), relating to nonpar-

tisan nomination and election of district court and supreme court judges, were repealed by Sec. 3, Ch. 20, Laws 1959; Sec. 248, Ch. 368, Laws 1969.

CHAPTER 21

PRESIDENTIAL ELECTORS, HOW CHOSEN—DUTIES

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-2101 to 23-2111. (813 to 823) Repealed.**Repeal**

Sections 23-2101 to 23-2111 (Secs. 1 to 5, 7, pp. 173, 174, L. 1891; Secs. 1460 to 1470, Pol. C. 1895; Sec. 1, Ch. 4, L.

1933; Sec. 1, Ch. 15, L. 1933; Sec. 1, Ch. 33, L. 1935), relating to election and duties of presidential electors, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 22

MEMBERS OF CONGRESS—ELECTIONS AND VACANCIES

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-2201 to 23-2206. (824 to 828) Repealed.**Repeal**

Sections 23-2201 to 23-2206 (Secs. 2, 3, p. 306, L. 1891; Secs. 1480, 1481, 1490 to 1492, Pol. C. 1895; Secs. 1, 2, Ch. 126,

L. 1915; Sec. 1, Ch. 146, L. 1965), relating to elections and vacancies in office of members of Congress, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 23

RECOUNT OF BALLOTS—RESULTS

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-2301 to 23-2323. (828.1 to 828.7, 829) Repealed.**Repeal**

Sections 23-2301 to 23-2323 (Secs. 1 to 7, Ch. 27, L. 1935; Secs. 1 to 15, Ch.

42, L. 1963), relating to recounts of ballots, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 24

CONVENTIONS TO RATIFY PROPOSED AMENDMENTS TO
CONSTITUTION OF THE UNITED STATES

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-2401 to 23-2411. (829.1 to 829.11) Repealed.**Repeal**

Sections 23-2401 to 23-2411 (Secs. 1 to 11, Ch. 188, L. 1933; Secs. 11, 12, Ch. 194, L. 1967), relating to conventions for ra-

tification of proposed amendments to the constitution of the United States, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 25

ELECTRONIC VOTING SYSTEMS

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-2501 to 23-2507. Repealed.

Repeal

Sections 23-2501 to 23-2507 (Secs. 1, 2, 4 to 8, Ch. 20, L. 1965; Secs. 1, 2, Ch.

220, L. 1967) relating to the use of electronic voting systems, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 26

DEFINITIONS AND GENERAL PROVISIONS

- Section
- 23-2601. Definitions.
- 23-2602. Elections by secret ballot.
- 23-2603. Determination of candidate elected.
- 23-2604. General election, when to be held.
- 23-2605. Time of opening and closing of polls.

23-2601. Definitions. As used in Title 23 and Title 37, unless the context clearly indicates otherwise, the following definitions apply :

- (1) "Election" means a general, special, or primary election held to choose a public officer or submit an issue for the approval or rejection of the people.
- (2) "General election" means an election held for the election of public officers throughout the state at times specified by law.
- (3) "Special election" means an election called by the proper authorities to fill vacancies or to raise money.
- (4) "Vacancy" means an office which does not have an incumbent who has a right to exercise its functions and take its fees or emoluments.
- (5) "Primary" or "primary election" means a statutory procedure for nominating candidates to public office at the polls.
- (6) "Party" means any political organization which at the last preceding election for governor polled at least 3% of the votes for governor.
- (7) "Taxpayer" means a person who has paid a tax on property assessed on a county or city assessment roll next preceding the election at which a question is to be submitted to the vote of the taxpayers.
- (8) "Registrar" means the county clerk and recorder and any regularly appointed deputy clerk and recorder.
- (9) "Commissioners" means the board of county commissioners.
- (10) "City" means any incorporated city or town.
- (11) "Council" means any municipal council or commission.

History: En. Sec. 1, Ch. 368, L. 1969; amd. Sec. 1, Ch. 365, L. 1977.

Compiler's Note

Chapter 368, Laws 1969 provided: "It is the intent of the legislative assembly that all nonamendatory sections of this bill be codified in Title 23, Revised Codes of Montana, 1947."

Title of Act

An act for the codification and general revision of the laws relating to the election laws of the state of Montana; repealing sections 23-101 through 23-106, 23-201 through 23-202, 23-301 through 23-311, 23-401 through 23-407, 23-501, 23-501.1, 23-502 through 23-534, 23-601 through 23-604, 23-604.1, 23-604.2, 23-605 through

23-612, 23-701 through 23-713, 23-801 through 23-820, 23-901 through 23-929, 23-931, 23-933 through 23-936, 23-1001, 23-1008 through 23-1009, 23-1101 through 23-1107, 23-1109 through 23-1117, 23-1201 through 23-1228, 23-1301, 23-1302(1), 23-1302(2), 23-1303, 23-1303.1, 23-1304 through 23-1321, 23-1401 through 23-1406, 23-1501 through 23-1503, 23-1601 through 23-1608, 23-1608A, 23-1609 through 23-1618, 23-1701 through 23-1715, 23-1801 through 23-1808, 23-1812 through 23-1819, 23-1901 through 23-1904, 23-2001 through 23-2012, 23-2014, 23-2101 through 23-2111, 23-2201 through 2206, 23-2301 through 23-2323, 23-2401 through 23-2411, 23-2501 through 23-2507, R. C. M. 1947.

Amendments

The 1977 amendment substituted "Title 23 and Title 37" in the introductory clause for "this act"; substituted subdivision (1) for a subdivision reading "'Election' means a general, special, primary nominating, municipal election, or an election in a school district"; inserted "public" in subdivision (2) and made minor changes in phraseology and style.

Cross-References

Election offenses and corrupt practices, sec. 23-4701 et seq.

DECISIONS UNDER FORMER LAW

"General Election"

A general election is one held for the election of officers throughout the state. State ex rel. Rowe v. Kehoe, 49 M 582, 591, 144 P 162.

"Special Election"

A special election is one held to supply a vacancy in a public office, or one in which is submitted to the electors a proposition to raise money for any public improvement. State ex rel. Rowe v. Kehoe, 49 M 582, 591, 144 P 162.

"Vacancy"

The word vacancy as applied to a public office has no technical meaning, and it is not to be taken in a strict technical sense in every case. It may be said that an office is vacant when it is empty and without an incumbent who has a right to exercise its functions and take its fees or emoluments even though the vacancy is not a corporal one. "An office without an incumbent is vacant." LaBorde v. McGrath 116 M 283, 292, 149 P 2d 913.

23-2602. Elections by secret ballot. All elections shall be by secret ballot.

History: En. Sec. 2, Ch. 368, L. 1969; amd. Sec. 1, Ch. 8, L. 1973.

Amendments

The 1973 amendment inserted "secret" before "ballot" at the end of the section.

23-2603. Determination of candidate elected. The person receiving the highest number of votes for any office at an election is elected to that office.

History: En. Sec. 3, Ch. 368, L. 1969.

23-2604. General election, when to be held. A general biennial election shall be held throughout the state in every even-numbered year on the first Tuesday after the first Monday of November.

History: En. Sec. 4, Ch. 368, L. 1969.

Cross-References

Cities and towns, elections of officers, secs. 11-701 to 11-734.

Election law violations, corrupt practices, sec. 23-4701 et seq.

Initiative and referendum, sec. 37-101 et seq.

23-2605. Time of opening and closing of polls. (1) Except as provided in subsection (2):

(a) in precincts having 100 or more registered electors, the polls must be opened at 8 a.m. on the morning of election day and must be kept open continuously until 8 p.m. of that day;

(b) in precincts having less than 100 registered electors, the polls must be opened at 1 p.m. and closed at 8 p.m. of that day;

(c) whenever all registered electors in any precinct have voted, the polls shall be closed immediately.

(2) If a special election is held by a county, city, high school district, or school district on the question of incurring an indebtedness or making a special or additional levy for any purpose, the polls shall open at 12 noon and be kept open continuously until 8 p.m. However, the poll hours shall be as specified in subsection (1) if the election is held on the same day, at the same polling places, and with the same judges and clerks as a general, county, school, or city election.

History: En. Sec. 5, Ch. 368, L. 1969; amd. Sec. 4, Ch. 365, L. 1977.

Amendments

The 1977 amendment inserted "in precincts having 100 or more registered electors" at the beginning of subdivision (1) (a); and made minor changes in phraseology, punctuation and style.

Cross-References

Airport bonds, sec. 1-804.
 Cities and towns, bond elections, secs. 11-2301 to 11-2330.
 County bonds and warrants, secs. 16-2001 to 16-2050.
 School bond elections, secs. 75-7110 to 75-7117.
 School elections, secs. 75-6401 to 75-6423.

23-2606. Repealed.

Repeal

Section 23-2606 (Sec. 247, Ch. 368, L. 1969), relating to violations of election

laws, was repealed by Sec. 49, Ch. 334, Laws 1977.

CHAPTER 27

QUALIFICATIONS AND PRIVILEGES OF ELECTORS

Section

23-2701. **Qualifications of voter.**

23-2704. Notice and closing of registration for elections on incurring of state indebtedness.

23-2705. **Privilege from arrest.**

23-2701. Qualifications of voter. (1) No person may be entitled to vote at elections unless he has the following qualifications:

- (a) He must be registered as required by law;
- (b) He must be eighteen (18) years of age or older;
- (c) He must be a resident of the state of Montana and of the county in which he offers to vote for at least thirty (30) days;
- (d) He must be a citizen of the United States.

(2) No person convicted of a felony has the right to vote while he is serving a sentence in a penal institution.

(3) No person adjudicated to be of unsound mind has the right to vote unless he has been restored to capacity as provided by law.

History: En. Sec. 6, Ch. 368, L. 1969; amd. Sec. 1, Ch. 120, L. 1971; amd. Sec. 2, Ch. 158, L. 1971; amd. Sec. 1, Ch. 40, L. 1973.

Amendments

Chapter 120, Laws of 1971, deleted "Except as provided in section 23-2702" from

the beginning of subdivision (1); substituted "of the minimum age for voting prescribed by the constitution of the state of Montana" in former subdivision (1) (a), now (1) (b), for "twenty-one (21) years of age"; added to former subdivision (1) (a), now (1) (b), a provision for voting in federal elections by 18-year-

olds; substituted "has met the residence requirements for voting provided in the constitution of the state of Montana" in former subdivision (1) (b), now (1) (c), for "must have resided in the state one (1) year"; added to former subdivision (1) (b), now (1) (c), a provision for presidential voting by persons who have resided in the state for thirty days; and made minor changes in phraseology.

Chapter 158, Laws of 1971, substituted "No person may be entitled to vote" and "unless" in the preliminary paragraph of subdivision (1) for "every person, if registered by law, is entitled to vote" and "if"; inserted a new subdivision (1) (a); redesignated subdivisions (a), (b) and (c) of subdivision (1), respectively, as subdivisions (b), (c) and (d); and substituted "of the minimum age for voting prescribed by the constitution of the state of Montana" in subdivision (1) (b) for "twenty-one (21) years of age."

The 1973 amendment substituted "elections" in the preliminary paragraph of subdivision (1) for "general and special elections for officers which are elective, and upon questions submitted to the vote of the people"; substituted "eighteen (18) years of age or older" in subdivision (1) (b) for references inserted by the 1971 amendments to the state constitution and to federal voting; substituted the present subdivision (1) (c) for references inserted by Ch. 120, Laws of 1971, to the state constitution and to presidential voting by new residents; substituted "while he is serving a sentence in a penal institution" at the end of subdivision (2) for "unless he has been pardoned"; and substituted "to be of unsound mind" in subdivision (3) for "insane."

Repealing Clause

Section 2 of Ch. 40, Laws 1973 read "Section 11-716, R. C. M. 1947, is repealed."

23-2701.1. Repealed.

Repeal

Section 23-2701.1 (Sec. 1, Ch. 158, L. 1971), relating to legislative policy and purpose of election laws according to

23-2702, 23-2703. Repealed.

Repeal

Sections 23-2702 and 23-2703 (Secs. 7, 8, Ch. 368, L. 1969), relating to qualifications of electors at elections on incurring state indebtedness, were repealed by Sec. 2, Ch. 120, Laws 1971.

23-2704. Notice and closing of registration for elections on incurring of state indebtedness. (1) If the question of state indebtedness, issuance

Effective Date

Section 3 of Ch. 120, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 1, 1971.

Racial Discrimination Prohibited

Congress is empowered, as it did in the Voting Rights Act Amendments of 1970, 42 U. S. C. § 1973aa, to prohibit use of literacy tests or other devices used to discriminate against voters on account of their race in all state and national elections. *Oregon v. Mitchell*, 400 US 112, 27 L Ed 2d 272, 91 S Ct 260.

Residence Requirements

As it did in the Voting Rights Act Amendments of 1970, 42 U. S. C. § 1973aa-1, Congress can prohibit states from disqualifying voters in elections for presidential and vice-presidential electors because they have not met state residency requirements, and can set residency requirements and provide for absentee balloting in presidential and vice-presidential elections. *Oregon v. Mitchell*, 400 US 112, 27 L Ed 2d 272, 91 S Ct 260.

Voting for Deceased Candidate

The casting of a ballot at an election of public officers is an affirmative, not a negative, act—an act done with intention of voting for someone; hence if it is the purpose of voters to defeat a certain candidate, that purpose can be accomplished only by voting for some person in opposition to him, and not by voting for a person who died some weeks before election with the expectation that the vote cast for him would be counted as opposed to the person sought to be defeated; one who has died is no longer a person for whom, under section 2, article IX of the constitution, a voter may cast his ballot. *State ex rel. Wolff v. Guerink*, 111 M 417, 426, 109 P 2d 1094, 133 ALR 304.

former constitution, was repealed by Sec. 58, Ch. 100, Laws 1973, and Sec. 9, Ch. 454, Laws 1973.

Compiler's Notes

Sections 3 and 4, Ch. 158, Laws of 1971, purported to amend these sections. However, the purported amendments are void under the provisions of section 43-515.

of bonds or debentures other than for refunding, or the levy of a tax for state purposes is submitted at an election other than a general biennial election, the registrar of each county shall publish in a newspaper of general circulation in the county a notice signed by him, stating that registration will close at noon on the 40th day prior to the date of the election unless the act providing for the submission of the question fixes a different time for the giving of notice. The notice shall be published 10 days or more prior to the date when registration will be closed unless the act providing for submission of the question fixes a different time for closing registration.

(2) If the question is to be submitted at a general biennial election, notice and the closing of registration shall be governed by the laws applying to general biennial elections. The provisions of 37-134 apply to the printing and distribution of copies of the proposed law.

History: En. Sec. 9, Ch. 368, L. 1969; amd. Sec. 25, Ch. 342, L. 1977; amd. Sec. 5, Ch. 365, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 342 and once by Ch. 365. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 342, Laws of 1977, substituted "37-134" in the last sentence of subsection (2) for "Section 37-107, R. C. M. 1947."

Chapter 365, Laws of 1977, substituted "a newspaper of general circulation in the county" in the middle of the first sentence of subsection (1) for "the official county newspaper"; and made minor changes in phraseology, punctuation and style.

Objection Waived

The objection that a measure creates a state debt, levy, or liability, and that therefore it should have been placed upon a separate ballot, is waived if not raised before the election. *State ex rel. Graham v. Board of Examiners*, 125 M 419, 239 P 2d 283, 290.

23-2705. Privilege from arrest. Electors are privileged from arrest during their attendance at elections and in going to and from voting places except in cases of treason, felony, or breach of the peace.

History: En. Sec. 10, Ch. 368, L. 1969.

Cross-Reference

Persons exempt from arrest, sec. 95-616.

CHAPTER 28

PUBLICATION OF QUESTIONS SUBMITTED TO POPULAR VOTE

Section

23-2801. Advertisement of questions to be submitted.

23-2802. Publication and printing of amendments to constitution.

23-2801. Advertisement of questions to be submitted. Questions to be submitted to the people of the county or city must be advertised by publication in at least one (1) newspaper within the county or city once a week for two (2) successive weeks. One (1) of the publications must be upon the last day the newspaper is issued before the election.

History: En. Sec. 11, Ch. 368, L. 1969.

23-2802. Publication and printing of amendments to constitution. If a proposed constitutional amendment or amendments are submitted to the people, the secretary of state shall have the proposed amendment or amend-

ments published in full twice each month for 2 months previous to the election at which they are to be voted upon by the people in not less than one newspaper of general circulation in each county.

History: En. Sec. 12, Ch. 368, L. 1969; amd. Sec. 1, Ch. 38, L. 1973; amd. Sec. 26, Ch. 342, L. 1977; amd. Sec. 6, Ch. 365, L. 1977.

Compiler's Notes

In a letter to the secretary of state dated March 23, 1970, the attorney general of Montana ruled that, despite this section, the secretary of state is required to publish proposed constitutional amendments once each week for three months, as required by sec. 9, article XIX, constitution of 1889. But see secs. 8 and 9 (2), article XIV, constitution of 1972.

This section was amended twice in 1977, once by Ch. 342 and once by Ch. 365. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

The 1973 amendment changed the publication requirement in subdivision (1) from once each week for four weeks to twice each month for two months; sub-

stituted "election at which they are to be voted upon by the people" in subdivision (1) for "next general biennial election"; inserted "commonly circulated" near the end of subdivision (1); and made minor changes in phraseology.

Chapter 342, Laws of 1977, deleted a subsection (2) which read: "Have a pamphlet printed containing an exact copy of the proposed amendment or amendments, an exact copy of existing constitutional provisions to be revised, and the amendment or amendments in the form in which it or they will be printed on the official ballot. The printed pamphlets shall be distributed as provided in section 37-107, R. C. M. 1947"; and made minor changes in phraseology, punctuation and style.

Chapter 365, Laws of 1977, made the same changes that were made by chapter 342.

Cross-Reference

Explanation of initiative, referendum and constitutional measures to be prepared by attorney general, sec. 37-104.1.

DECISIONS UNDER FORMER LAW

Referendums

Legislature, by repealing section 537, R. C. M. 1935 and leaving in effect section requiring publication of proposed constitutional amendments, indicated its intent to dispense with publication prior

to general election of legislative acts referred to the people by the legislature, or the governor's proclamation that such act would be voted upon at such election. Nordquist v. Ford, 112 M 278, 283, 114 P 2d 1071.

CHAPTER 29

PROCLAMATIONS AND PUBLICATIONS

- Section**
 23-2901. Election proclamation by the governor.
 23-2902. Publication and posting by county commissioners.
 23-2903. Election proclamation by county commissioners.
 23-2904. Copies of election laws to be furnished registrar—registrar to distribute to precincts.

23-2901. Election proclamation by the governor. Sixty days or more before a general election, the governor shall issue an election proclamation and transmit a copy to each board of county commissioners. The proclamation shall contain:

- (1) a statement of the time of the election and the offices to be filled;
- (2) an offer of rewards stating: "There is a reward of \$100 for the arrest and conviction of any person violating any of the provisions of Title 23 or Title 37. Rewards will be paid until the total amount expended reaches the sum of \$5,000.

History: En. Sec. 13, Ch. 368, L. 1969; amd. Sec. 7, Ch. 365, L. 1977.

Amendments

The 1977 amendment substituted "Title 23 or Title 37" in subdivision (2) for "sections 23-4701 through 23-4724, R. C. M. 1947"; and made minor changes in style.

Office Not Mentioned

The governor issued his proclamation giving notice of a general election and omitted therefrom the mention of an election of three judges for the second judicial district, and called for the election of two judges. Upon mandamus proceedings against the governor, the relator claimed that three judges should have been mentioned in the proclamation, and that he was elected and entitled to receive from the governor a commission as judge. As it failed to appear that the electors voted for more than two candidates for judgeships, the petition was dismissed. *State ex rel. Breen v. Toole*, 32 M 4, 8, 79 P 403.

23-2902. Publication and posting by county commissioners. When a proclamation prescribed by section 23-2901 is received, the commissioners shall have a copy published in a newspaper published in the county if a newspaper is published therein, otherwise in a newspaper of general circulation therein, and shall post a copy ten (10) days or more before the election at each polling place.

History: En. Sec. 14, Ch. 368, L. 1969.

23-2903. Election proclamation by county commissioners. When a special election is ordered by the commissioners, they must issue an election proclamation containing the statement contained in section 23-2901 (1). The statement must be published and posted in the same manner as a proclamation issued by the governor.

History: En. Sec. 15, Ch. 368, L. 1969.

Notice Not Proclamation

The notice of election does not take the place of the election proclamation. *Evers v. Hudson*, 36 M 135, 154, 92 P 462.

Public Improvements

Prior section had no reference to elections held for raising money for public improvements. The power conferred in this behalf is exercised under special provisions

Sufficiency of Notice

A statement in the proclamation of the governor giving notice of a general election, that among other officers there was to be elected "also a district judge, in any judicial district where a vacancy may exist," was not such a notice of the necessity of filling a vacancy by election. *State ex rel. Patterson v. Lentz*, 50 M 322, 343, 146 P 932.

The governor's proclamation should state the offices to be filled, especially where a state office, such as a judgeship, held by his appointee, is to be filled; but, if the people have actual notice that a judge is to be elected and indicate their choice, no insufficiency of notice, in the governor's proclamation, of a vacancy in that office, in any particular district, or other informality in the election, will suffice to defeat their will, as expressed by their votes. *State ex rel. Patterson v. Lentz*, 50 M 322, 343, 146 P 932.

on the subject, found in that part of the codes relating to county government. *State ex rel. Rowe v. Kehoe*, 49 M 582, 592, 144 P 162.

Vacancies

In case of vacancies in county offices, boards of county commissioners have the power, and it is their duty, to call and provide for the holding of special elections to fill them. *State ex rel. Rowe v. Kehoe*, 49 M 582, 592, 144 P 162.

23-2904. Copies of election laws to be furnished registrar—registrar to distribute to precincts. The secretary of state shall publish copies of the election laws and laws which relate to elections. He shall transmit sufficient copies to each registrar. The registrar shall furnish each election precinct in his county with two (2) copies.

History: En. Sec. 16, Ch. 368, L. 1969.

CHAPTER 30

REGISTRATION OF ELECTORS

- Section**
- 23-3001. Highway patrol to submit new-voter lists to major political parties.
- 23-3002. County clerk as county registrar.
- 23-3003. Deputy registrars.
- 23-3004. Registry book and card index.
- 23-3004.1. Resident school district included in registration.
- 23-3005. Hours of registration—registration cards.
- 23-3006. Method of registering—absent electors in the United States service.
- 23-3007. Registration of infirm elector at his residence.
- 23-3008. Procedure when prospective voter not qualified at time of registration—United States citizenship necessary.
- 23-3009. Transferring registration to another precinct.
- 23-3010. Procedure for transferring registry.
- 23-3011. Inquiry as to previous registration—procedure.
- 23-3012. Lists of registered electors—precinct register.
- 23-3013. Cancellation of registry for failure to vote—reregistration.
- 23-3014. Cancellation of registration for other reasons.
- 23-3015. Challenges prior to election.
- 23-3016. Close of registration—procedure.
- 23-3017. Registration while registry closed preceding election.
- 23-3018. Name on precinct register prima facie evidence of right to vote.
- 23-3019. Joinder of parties in proceedings to compel registrar to enter name in precinct register.
- 23-3020. Erroneous omission of name from precinct register—Certificate.
- 23-3022. Residence, rules for determining.
- 23-3023. Printing and posting of list of electors shown on precinct registers.
- 23-3024. Preparation of precinct register.
- 23-3026. Commissioners to provide registrar with sufficient help.
- 23-3027. Charges to city or school district—warrant—when no precinct registers required.
- 23-3028. Copies of precinct registers available to any person upon written request—charge.

23-3001. Highway patrol to submit new-voter lists to major political parties. No later than January 31 in any year in which a general election is held, the Montana highway patrol shall submit to the chairman of each major political party of the state, four (4) copies of a list prepared from its driver license registration files, showing names and addresses of all persons, compiled on a county by county basis, who have reached voting age since the last general election and those who will reach voting age before the date of the general election. No official of the Montana highway patrol shall be responsible for any honest error or omission in preparing the lists.

History: En. Sec. 17, Ch. 368, L. 1969; amd. Sec. 1, Ch. 257, L. 1971; amd. Sec. 1, Ch. 132, L. 1973.

piled on a county by county basis" in the first sentence; and made a minor change in phraseology.

Amendments

The 1971 amendment inserted "com-

The 1973 amendment inserted "four (4) copies of" before "a list" in the first sentence.

23-3002. County clerk as county registrar. (1) Each county clerk and recorder is ex officio county registrar. He shall serve without extra pay or compensation.

(2) The official register of electors is an official record of the county clerk and recorder.

(3) Unless otherwise provided, the county clerk and recorder shall have custody of registration books, cards, and other records required by the election laws of this state.

History: En. Sec. 21, Ch. 368, L. 1969; amd. Sec. 8, Ch. 365, L. 1977.

Amendments

The 1977 amendment deleted a subdivi-

sion (1)(a) designation; redesignated former subdivision (1)(b) as subsection (3); inserted "Unless otherwise provided" at the beginning of subsection (3); and made minor changes in phraseology.

23-3003. Deputy registrars. (1) All notaries public are deputy registrars in the county in which they reside.

(2) The commissioners shall appoint a minimum of two deputy registrars who are not notaries public, a minimum of one from each of the two major political parties, for each precinct in the county from lists of persons recommended by the political parties. If the parties fail to submit lists, the commissioners shall appoint deputy registrars without recommendations from the parties. The number of appointed deputy registrars for each county shall always be equally divided between the two major political parties. An appointed deputy registrar shall be a qualified resident elector in the precinct for which he is appointed.

(3) No deputy registrar may register a voter until that deputy registrar has been issued a certificate of approval by the county registrar certifying that the deputy registrar has received instructions on registration procedure from the county registrar.

(4) A deputy registrar who has been issued the certificate required by subsection (3) may register electors residing in any precinct of the county for which he is a deputy registrar.

(5) Within 3 days after a registration card is filled out, deputy registrars shall forward the card to the registrar. Registration cards properly executed prior to the registration deadline shall be accepted by the registrar for 3 days after the deadline.

History: En. Sec. 22, Ch. 368, L. 1969; amd. Sec. 1, Ch. 340, L. 1973; amd. Sec. 1, Ch. 205, L. 1975; amd. Sec. 9, Ch. 365, L. 1977.

Amendments

The 1973 amendment inserted "a minimum of" twice in the first sentence of subsection (2); inserted the third sentence in subsection (2); inserted subdivision (2) (c); added the second sentence to subsection (3); and made a minor change in phraseology.

The 1975 amendment added the third sentence to subsection (1); and deleted "taxpaying" before "resident elector" in subdivision (a) of subsection (2).

The 1977 amendment deleted the second and third sentences of subsection (1) which read: "They may register electors

residing in any precinct within the county. No notary public may register any voter until he has been issued a certificate of approval of the county registrar certifying that he has received instructions on registration procedure from the county registrar"; substituted "An appointed deputy registrar" at the beginning of the last sentence of subsection (2) for "A deputy registrar"; deleted a subdivision (2)(a) designation; deleted subdivision (2)(b) which read: "Register electors residing in any precinct in the county"; redesignated subdivision (2)(c) as subsection (3); deleted "duly appointed" before "deputy registrar" at the beginning of subsection (3); inserted subsection (4); redesignated former subsection (3) as subsection (5); and made minor changes in phraseology and style.

23-3004. Registry book and card index. The registrars shall keep an official register in a manner which each registrar deems the most efficient.

A card index shall be kept by the registrar and shall at all times be in the custody of the registrar. The form and information recorded in the registry book and on the registry cards shall be designated by the secretary of state.

History: En. Sec. 23, Ch. 368, L. 1969.

23-3004.1. Resident school district included in registration. In the discretion prescribed by section 23-3004, R.C.M. 1947, the county registrar shall record the resident school district of each person registering to vote to allow the preparation of registered elector lists for each school district of the county.

History: En. Sec. 1, Ch. 243, L. 1971.

Title of Act

An act to require recording of the

school district of residence when registering electors; and amending sections 23-3023 and 23-3027, R.C.M. 1947, providing for precinct registers.

23-3005. Hours of registration—registration cards. (1) The registrar's office shall be open for voter registration from 8 a.m. until 5 p.m. on all regular working days except legal holidays as defined by section 19-107 except that the registrar's office shall be kept open on election day during the hours when the polls are open.

(2) Registration cards shall be numbered consecutively in order of receipt through the close of registration prior to the 1974 general election; thereafter, registration cards may, at the discretion of the county clerk and recorder, be numbered with the elector's social security number, and such number shall be the registry number.

(3) The registrar shall classify registration cards by precinct and arrange the cards for each precinct in alphabetical order.

(4) The cards for each precinct shall be kept in a separate file.

(5) Immediately after filling out a registration card, the registrar shall enter the information in the official register of the county in the proper precinct.

History: En. Sec. 24, Ch. 368, L. 1969;
amd. Sec. 1, Ch. 3, L. 1974.

Amendments

The 1974 amendment added the portion of subsection (2) following "order of receipt"; and made a minor change in style.

23-3006. Method of registering—absent electors in the United States service. (1) An elector may register by appearing before the registrar or deputy registrar in the county in which he resides and:

(a) answering any questions asked by the registrar concerning items of information called for by registry cards;

(b) signing and verifying or affirming the affidavit or affidavits on the card.

(2) An elector may register by mailing, postage paid, a properly completed registry card to the registrar in the county in which he resides.

(3) The registrar shall send registry cards for mail registrations to all persons requesting them, whether the application is made in writing or by telephone, and shall, in addition, arrange for the cards to be available from city and town clerks within the county and may arrange for them

to be available at other locations within the county. The mail registry card shall be in the form prescribed by the secretary of state.

(4) The elector shall complete, sign, and either verify or affirm the registry card before a notary public or other officer empowered to administer oaths or complete and sign the card and obtain the signature, address, and voting precinct of at least one registered voter in the county, who shall witness the facts stated on the registry card.

(5) The registration card must be received on or before the day of the close of registration.

(6) Upon receipt of a properly executed registry card the county registrar shall cause to be sent to the new voter a postcard affirming registration and giving the location of the voter's polling place. On the face of the notification shall be printed the words, "Do Not Forward, Return Postage Guaranteed".

(7) Any elector in the United States service who is absent from the state and the county of which he is a resident may register by:

(a) mailing the registry card filled out and signed under oath to the registrar; or

(b) mailing the federal post card application filled out and signed under oath to the registrar.

History: En. Sec. 25, Ch. 368, L. 1969; amd. Sec. 1, Ch. 396, L. 1975; amd. Sec. 40, Ch. 334, L. 1977.

Amendments

The 1975 amendment inserted present subsection (2); redesignated former subsections (2) and (3) as subsections (3) and (4); deleted "less than one (1) nor" in the preliminary clause of present subsection (4); substituted "upon his registry card and causes or attempts to cause registration with the card" for "by registration to any registrar and causes his name to be registered" in subdivision (b) of present subsection (4); added subdivision (d) to subsection (4); and made minor changes in punctuation and phraseology.

The 1977 amendment deleted "the back of" before "the card" in subdivision (1) (b); redesignated former subdivisions (2) (a) through (2)(d) as subsections (3) through (6); deleted "but in no event less than ten (10) days before the election"

from the end of subsection (5); redesignated former subsection (3) as subsection (7); deleted a former subsection (4) which read: "A person is guilty of a felony and upon conviction shall be imprisoned in the state prison for not more than three years, if: (a) He falsely personates another and causes the person so personated to be registered; or, (b) Falsely represents his name or other information required upon his registry card, and causes or attempts to cause registration with the card; or, (c) Causes any name to be placed upon the registry lists other than in the manner provided by this act; or, (d) Signs a registry card knowingly witnessing any false or misleading statement"; and made minor changes in phraseology, punctuation and style.

Repealing Clause

Section 2 of Ch. 396, Laws 1975 read "Sections 23-3722 and 23-3723, R. C. M. 1947, are repealed."

23-3007. Registration of infirm elector at his residence. (1) If an elector is unable to appear before the registrar or a deputy registrar because of physical infirmity, he may send written notice to the registrar or to a deputy registrar asking that his registration be made at his residence.

(2) No person is entitled to receive reimbursement for expenses incurred in complying with this section.

History: En. Sec. 26, Ch. 368, L. 1969.

23-3008. Procedure when prospective voter not qualified at time of registration—United States citizenship necessary. (1) A person who is not eligible to register because of residence requirements but who will be eligible on or before election day, may register with the registrar if he answers the questions of the registrar and it appears that he will become qualified to vote by election day.

(2) A person shall not be permitted to register until he attains United States citizenship.

History: En. Sec. 27, Ch. 368, L. 1969.

23-3009. Transferring registration to another precinct. If an elector changes his residence, he may transfer his registration to the new precinct by:

(1) Executing in person a new registry card before a deputy registrar of the new precinct, and the deputy registrar shall not receive compensation for this service, or

(2) Making a request in writing to the registrar in a form prescribed by the secretary of state.

History: En. Sec. 28, Ch. 368, L. 1969.

23-3010. Procedure for transferring registry. (1) When a request to transfer registry is received, the registrar shall compare the elector's signature on the request with his signature on the registry card and may question the elector on any information shown on the registry card.

(2) If the registrar is satisfied, he shall endorse on the registry card the date of the transfer and the precinct to which transferred.

(3) The registrar shall file the registry card in the register of the precinct of the elector's residence, or in the register of the precinct of transfer, and transfer the elector's name to the proper precinct in the register.

(4) Where the elector changes his place of registration as provided in section 23-3009 (1), the registrar shall file the new card in the register of the precinct of the elector's present residence and transfer the elector's name to the proper precinct in the register. The old registration card shall be marked "canceled" and placed in the "canceled file."

History: En. Sec. 29, Ch. 368, L. 1969.

23-3011. Inquiry as to previous registration—procedure. (1) The registrar shall question each person registering to ascertain whether he has previously registered in this state. If the person has previously registered, the registrar shall enter his name in a separate file which is indexed by counties. Cards for this purpose shall be in the form prescribed by the secretary of state.

(2) Not more than three (3) days after closing the registration books, the registrar shall forward the cards to the registrar where the applicant previously voted by registered or certified mail. The delivery receipt shall be kept on file with other election records.

(3) Upon receiving notice to cancel the registration of an elector, the registrar shall immediately draw red lines through the elector's name in the register and on the registration card.

History: En. Sec. 30, Ch. 368, L. 1969.

23-3012. Lists of registered electors—precinct register. Immediately after registration is closed, the registrar shall prepare lists of all registered electors. He shall also prepare a precinct register for each precinct and deliver it to the judges of election prior to the opening of the polls.

History: En. Sec. 31, Ch. 368, L. 1969; amd. Sec. 5, Ch. 158, L. 1971; amd. Sec. 12, Ch. 100, L. 1973.

Amendments

The 1971 amendment substituted "an election at which voting is validly limited by the constitution to taxpayers" for "an election for the incurring of a state debt, issuance of bonds or debentures by the state, or the levying of a state tax" at

the end of the first sentence of former subsection (2); and deleted from former subsection (2) a second sentence reading "No other evidence is necessary to show that the elector is a taxpayer."

The 1973 amendment deleted former subsection (2), which provided for indication of taxpayers on the precinct registers; and removed the designation of the remaining language as subsection (1).

23-3013. Cancellation of registry for failure to vote—reregistration. (1) Except as provided in subsection (3) of this section, within sixty (60) days after every general election in which a president is elected, the registrar shall:

(a) Compare the electors who have voted in each precinct, as shown by the official pollbooks, with the official register of each precinct;

(b) Remove the registry cards of all electors who have failed to vote, mark each card "canceled," and place canceled cards for the entire county in alphabetical order in the "canceled file".

(2) An elector whose card is removed and canceled may register in the same manner as his original registration was made.

(3) The registration of an elector who actually votes by absentee ballot shall not be canceled if his ballot is received and rejected by the registrar within ten (10) days succeeding the election.

(4) When the registrar has completed cancellation of voters as provided in this section, a notice of cancellation shall be published once a week for two weeks in a newspaper of general circulation in the county. The notice shall be run R.O.P. in a display advertisement and shall be in a form prescribed by the secretary of state.

History: En. Sec. 32, Ch. 368, L. 1969; amd. Sec. 1, Ch. 254, L. 1971; amd. Sec. 1, Ch. 215, L. 1973; amd. Sec. 1, Ch. 369, L. 1977.

Amendments

The 1971 amendment inserted "and (4)" in subsection (1); added subsection (4) (now (3)); and made minor changes in phraseology and punctuation.

The 1973 amendment deleted a reference to subsection (4) from subsection (1);

substituted "within sixty (60) days" for "immediately" in subsection (1); inserted "in which a president is elected" in subsection (1); deleted former subsection (3) and renumbered former subsection (4) as (3).

The 1977 amendment deleted subdivision (1)(c) which read "Notify each elector in writing before the thirty-first day after cancellation by sending notice to his post-office address as shown on the election records"; and added subsection (4).

23-3014. Cancellation of registration for other reasons. (1) The registrar shall cancel any registration card:

- (a) at the written request of the person registered;
- (b) if a certificate of the death of any elector is filed or if an elector is reported as deceased by the department of health and environmental sciences in the department's reports submitted to the county under 91-4458;
- (c) whenever 45 days or more prior to the closing of registration, three qualified registered electors residing within the precinct challenge an elector by filing affidavits giving the name of the challenged elector, his registry number, his residence, and stating of the personal knowledge of the affiant the person registered does not reside at the place designated on his registration card;
- (d) whenever the insanity of the elector is legally established;
- (e) whenever the incarceration of an elector in a penal institution for a felony conviction is legally established; or
- (f) whenever a certified copy of a court order directing the cancellation is filed with the registrar.

(2) Within 30 days after registration has been canceled, the registrar shall send written notice to the elector at the address shown on the registration card. If a person proves to the registrar that he is qualified, he may reregister.

History: En. Sec. 33, Ch. 368, L. 1969; amd. Sec. 1, Ch. 299, L. 1971; amd. Sec. 10, Ch. 365, L. 1977.

Amendments

The 1971 amendment added subsection (3).

The 1977 amendment inserted the alternative clause in subdivision (1)(b); substituted "whenever 45 days or more" at the beginning of subsection (1)(c) for "within 45 days"; substituted subdivision (1)(e) for "If a certified copy of a final judgment of conviction of any elector of a felony is filed"; deleted subsection (3) which read: "At the close of registration, the court clerk of each county shall send

a list of those electors whose registrations have been cancelled due to a felony conviction to the secretary of state. The secretary of state shall compile a list of all such electors and send a copy of the list to each registrar"; and made minor changes in phraseology, punctuation and style.

Felony Conviction

A Montana voter cannot be denied the right to vote because of conviction of an offense in federal court that would not be a felony by Montana statutory definition. *Melton v. Oleson*, — M —, 530 P 2d 466; overruling *State ex rel. Anderson v. Fousek*, 91 M 448, 8 P 2d 791.

23-3015. Challenges prior to election. (1) An elector may challenge the qualifications of another elector any time not later than 20 days prior to an election. The challenge must:

- (a) be filed with the registrar and be signed by the elector;
 - (b) be verified by the affidavit of the elector that the elector designated is not entitled to vote;
 - (c) state the grounds of the challenge, objection, and disqualification.
- (2) The registrar shall:
- (a) file the affidavit of challenge in his office;
 - (b) deliver a correct copy of the affidavit to the judges of election together with a copy of the precinct registers, check lists, and other documents;
 - (c) write opposite the name of any person whose qualifications are challenged the words, "to be challenged";

(d) notify the elector within 5 days by certified or registered mail that his qualifications as an elector have been challenged.

(3) An elector's right to vote may be challenged on election day by any registered elector by orally stating to the election judges the grounds of the challenge.

(4) The election judges shall:

(a) test the qualifications of the elector challenged under oath if he applies to vote;

(b) compare the answers of the elector with the entries in the precinct register books; and

(c) not permit him to vote if the elector is found to be disqualified because the answers given do not correspond to the entry in the precinct registers or the elector is disqualified for any cause under the law or he refuses to take an oath or affirmation as to his qualifications.

(5) The election judges may require the challenged elector to produce one or more electors of the county to be examined under oath as to the qualifications of the challenged elector and may also request assistance from the county attorney and the registrar in determining the elector's qualifications.

History: En. Sec. 34, Ch. 368, L. 1969;
amd. Sec. 11, Ch. 365, L. 1977.

Date for Holding Election

Under prior section, a period of not less than sixty days was required to lapse between time an election was called and time it was held. *State ex rel. Eagye v. Bawden*, 51 M 357, 361, 152 P 761.

Amendments

The 1977 amendment redesignated subdivision (1)(d) as subdivision (2)(d); substituted "certified or registered mail" for "registered United States mail" in subdivision (2)(d); and made minor changes in style.

23-3016. Close of registration—procedure. (1) The registrar shall:

(a) Close registrations as follows: (i) for thirty (30) days before any federal election; (ii) at noon the day before election for voters entitled under the provisions of section 23-3724, R.C.M. 1947, to register to that time; (iii) for forty (40) days before any election other than hereinabove provided.

(b) Immediately after closing registration send the secretary of state a certificate showing the number of voters registered in each precinct in a county;

Sixty (60) days before the election, publish notice in a newspaper of general circulation in the county specifying the day registrations will close and post the notice in each precinct. The published notice shall continue for a period of twenty (20) days.

(2) The notice shall state that electors may register for the ensuing election by appearing before the registrar or before any deputy registrar as provided by law.

History: En. Sec. 35, Ch. 368, L. 1969;
amd. Sec. 1, Ch. 385, L. 1971.

Amendments

The 1971 amendment rewrote subdivision

(1) (a) which formerly read, "Close all registration for forty (40) days before any election"; substituted "Sixty days before the election" for "Twenty (20) days before the closing" at the beginning

of the second paragraph of subdivision (1) (b); and made minor changes in style and phraseology.

Effective Date

Section 2 of Ch. 385, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 15, 1971.

Durational Residency Requirements

Durational residency requirements of 3 months in county and one year in state as conditions precedent to voting violate the equal protection clause of the four-

teenth amendment; unreasonableness of the classification was established by the fact that the registration books in Tennessee were not closed until 30 days before the election and this was ample time to complete whatever administrative tasks were necessary to ensure the purity of the ballot box. *Dunn v. Blumstein*, 405 US 330, 31 L Ed 2d 274, 92 S Ct 995, distinguished in 410 US 752, 757, 36 L Ed 2d 1, 93 S Ct 1245, 1249, 463 F 2d 54, 56, 468 F 2d 1213, 1216, 341 F Supp 1187, 1191, 350 F Supp 646, 651, 388 F Supp 1139, 1143, explained in 506 F 2d 900, 902.

23-3017. Registration while registry closed preceding election. During the time when the registry is closed preceding any election, a person may register and the registrar shall keep his registry card in a separate file until the official register is again open. At that time, all cards in the temporary file shall be placed in their proper position in the official register.

History: En. Sec. 36, Ch. 368, L. 1969.

23-3018. Name on precinct register prima facie evidence of right to vote.

(1) A person may not vote at an election mentioned in Title 23 or Title 37 unless his name appears on election day in the copy of the official precinct register furnished by the registrar to the election judges. The fact that his name appears in the copy of the precinct register is prima facie evidence of his right to vote.

(2) If the election judges have good reason to believe or if they are informed by a qualified elector that the person offering to vote is not the person registered in that name, he may not be allowed to vote until he has proved his identity by the oath of two reputable electors of the precinct in which he is registered.

History: En. Sec. 37, Ch. 363, L. 1969; amd. Sec. 12, Ch. 365, L. 1977.

Amendments

The 1977 amendment substituted "Title 23 or Title 37" in the first sentence of subsection (1) for "this act"; deleted subsection (3) which read: "The election judges in each precinct at every general or special election in a precinct register certified to them by the registrar shall: (a) Mark a cross (X) upon the line opposite the name of the elector; (b) Require the elector to sign his name upon one of the precinct registers; (c) Require an elector, who is not able to sign his name, to produce two (2) electors who shall make an affidavit before the election judges in a form prescribed by the secre-

tary of state. One of the election judges shall write on the affidavit the elector's name, note his inability to sign, and the names of the electors making affidavits. The affidavits shall be returned to the registrar with the other election records"; and made minor changes in phraseology and style.

Failure To Sign

Failure of the election judges of a precinct to require the electors to sign the registry books before voting at a primary election was the fault of the judges and not of the electors, and therefore their votes were legal and properly counted. *Thompson v. Chapin*, 64 M 376, 383, 209 P 1060.

23-3019. Joinder of parties in proceedings to compel registrar to enter name in precinct register. In any action or proceeding instituted in a district court to compel the registrar to enter the name of any elector in the precinct register, as many persons may be joined as plaintiffs for

cause of action and as many persons as there are causes of action may be joined as defendants.

History: En. Sec. 38, Ch. 368, L. 1969.

23-3020. Erroneous omission of name from precinct register—certificate.

(1) An elector whose name is erroneously omitted from a precinct register or other election register may secure from the registrar a certificate of the error stating the precinct in which he is entitled to vote and present the certificate to the election judges which will entitle him to vote.

(2) The certificate shall be marked "voted" by the election judges and returned by them with the precinct register.

History: En. Sec. 39, Ch. 368, L. 1969.

23-3021. Repealed.

Repeal Section 23-3021 (Sec. 40, Ch. 368, L. 1969), relating to registration of naturalized citizens, was repealed by Sec. 76, Ch. 365, Laws 1977.

23-3022. Residence, rules for determining. For registration or voting, the residence of any person shall be determined by the following rules as far as they are applicable.

(1) The residence of a person is where his habitation is fixed, and to which, whenever he is absent, he has the intention of returning.

(2) A person may not gain or lose a residence while kept involuntarily at any public institution not necessarily at public expense, while confined in any public prison, or while residing on a military reservation.

(3) A person in the armed forces of the United States may not become a resident in consequence of being stationed at a military facility in the state. A person may not acquire a residence by reason of being employed or stationed at a training or other transient camp maintained by the United States within the state.

(4) A person does not lose his residence if he goes into another state, or other district of this state, for temporary purposes with the intention of returning unless he exercises the election franchise in the other state or district.

(5) A person may not gain a residence in a county if he comes in for temporary purposes without the intention of making that county his home.

(6) If a person moves to another state with the intention of making it his residence, he loses his residence in this state.

(7) If a person moves to another state with the intention of residing there for an indefinite time, he loses his residence in this state even though he intends to return to this state at some future period.

(8) The place where a person's family resides is presumed that person's place of residence. However, a person who takes up or continues a residence at a place other than where his family resides with the intention of remaining is a resident of the place where he resides.

(9) A change of residence can only be made by the act of removal joined with intent to remain in another place. There can only be one residence.

(10) The term of residence must be computed by including the day of election.

History: En. Sec. 41, Ch. 368, L. 1969; amd. Sec. 1, Ch. 394, L. 1971; amd. Sec. 1, Ch. 164, L. 1975; amd. Sec. 1, Ch. 177, L. 1975.

Compiler's Notes

This section was amended twice in 1975, once by Ch. 164 and once by Ch. 177. Neither amendatory act mentioned the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1971 amendment deleted "while employed in the service of the United States or of this state" after "lose a residence" in subdivision (2); and made a minor change in punctuation.

Chapter 164, Laws of 1975, substituted references to "person's" and "person" in subdivision (8) for references to "man's" and "man"; substituted "resides" for "resided" before "with the intention of remaining" in subdivision (8); substituted "day" for "date" in subdivision (10); and made minor changes in phraseology.

Chapter 177, Laws of 1975, deleted "while a student at any institution of learning" in subdivision (2); and substituted "day" for "date" in subdivision (10).

Acts and Intent of Voter

The residence of a voter is to be determined from his acts and intent; but this fact, like any other fact involved in a civil action or proceeding, may be established by circumstantial evidence, and any declarations of the voter touching the sub-

ject, if a part of the *res gestae*, or any declarations in disparagement of his right to vote, if made at or before the election, may be received in evidence. *Sommers v. Gould*, 53 M 538, 544, 165 P 599.

Inapplicable to Licensing of Automobiles

Section prescribing the conditions determining the right to vote with respect to residence of the voter had no bearing upon the situs of one's property (an automobile) or the ownership thereof for purpose of taxation, or licensing. *Valley County v. Thomas*, 109 M 345, 386, 97 P 2d 345.

Presumption

Predecessor to subdivision (8) was held to be in reality a rule of evidence. *Carwile v. Jones*, 38 M 590, 602, 101 P 153.

Residency Requirements

Durational residency requirements of 3 months in county and one year in state as conditions precedent to voting violate the equal protection clause of the fourteenth amendment; unreasonableness of the classification was established by the fact that the registration books in Tennessee were not closed until 30 days before the election and this was ample time to complete whatever administrative tasks were necessary to ensure the purity of the ballot box. *Dunn v. Blumstein*, 405 US 330, 31 L Ed 2d 274, 92 S Ct 995, distinguished in 410 US 752, 757, 36 L Ed 2d 1, 93 S Ct 1245, 1249; 463 F 2d 54, 56; 468 F 2d 1213, 1216; 341 F Supp 1187, 1191; 350 F Supp 646, 651; 388 F Supp 1139, 1143; explained in 506 F 2d 900, 902.

23-3023. Printing and posting of list of electors shown on precinct registers. (1) The registrar shall have a list printed of all registered electors shown on the precinct registers of the county or city ten (10) days or more preceding any election.

(2) The list shall show the name of the elector in full, the number and street of his residence if he resides within a city, his post-office address if he resides outside a city, and the registry number.

(3) A copy of the list of registered voters shall be posted at the polling place. Sufficient copies of the lists shall be retained by the registrar and furnished to an elector upon request.

(4) If no declarations of nomination have been filed forty (40) days before a primary election of city offices, the city clerk shall immediately notify the registrar in writing and the list of registered electors for the city shall not be printed.

(5) The list of registered voters prepared for a primary election may be used for the general election only if a supplemental list giving the

names of electors who have registered after the first list was prepared is printed.

(6) The expense of printing this list shall be paid by the county or city in which the election is to be held.

History: En. Sec. 42, Ch. 368, L. 1969; amd. Sec. 2, Ch. 243, L. 1971; amd. Sec. 1, Ch. 201, L. 1973.

Amendments

The 1971 amendment deleted "or first class school district" after "city" in subsection (1); and deleted "or school district" after "city" in subsection (6).

The 1973 amendment deleted "Ten (10) days or more before any election," from the beginning of subsection (3); deleted "or posted" from the end of subsection (4); and deleted "posted and" and "and posted" from subsection (5).

23-3024. Preparation of precinct register. After the closing of the official register and before the election, the registrar shall:

(1) Prepare a "precinct register" for each precinct for use by clerks and election judges;

(2) List the names of electors in alphabetical divisions;

(3) Show all information from the registry card of each elector, except the oath of the elector;

(4) Deliver a certified copy of the precinct register to the election judges prior to the opening of the polls;

(5) Combine into one (1) precinct register the names of all electors in the several precincts where the precincts in city elections, or elections in school districts of the first class, include more than one (1) county precinct.

(6) If no declarations of nomination have been filed forty (40) days before a primary election for city offices, the city clerk shall immediately notify the registrar in writing, and the precinct register or registers shall not be prepared.

History: En. Sec. 43, Ch. 368, L. 1969.

23-3025. Repealed.

Repeal

Section 23-3025 (Sec. 44, Ch. 368, L. 1969), relating to attempting to vote after

vote rejected, was repealed by Sec. 49, Ch. 334, Laws 1977.

23-3026. Commissioners to provide registrar with sufficient help. The commissioners shall provide the registrar with sufficient help for the duties imposed by Title 23 or Title 37. The cost of stationery, printing, publishing, and posting is a proper charge against the county.

History: En. Sec. 45, Ch. 368, L. 1969; amd. Sec. 13, Ch. 365, L. 1977.

Amendments

The 1977 amendment substituted "Title 23 or Title 37" at the end of the first sentence for "this act"; and made minor changes in phraseology and punctuation.

23-3027. Charges to city or school district—warrant—when no precinct registers required. (1) For each name entered on a precinct register prepared for a city or school district, the registrar shall charge the city

or school district three cents (\$.03). He shall also charge the actual expense incurred on account of the city or school district.

(2) The council or board of school trustees shall order a warrant drawn for the expenses specified in subsection (1) of this section within thirty (30) days after notification of the charges.

(3) If no general city election is required, the registrar shall not prepare precinct registers.

(4) If there are only as many candidates nominated as there are vacancies on a first class school district board of trustees, the registrar shall not prepare precinct registers.

(5) Within two (2) days after nominations are legally closed, the city clerk or clerk of a first class school district shall notify the registrar when no precinct registers are required.

History: En. Sec. 46, Ch. 368, L. 1969; amd. Sec. 3, Ch. 243, L. 1971.

tence of subsection (1); and deleted "in printing and posting the lists of electors, publishing notice, and other expenses incurred" after "actual expense incurred" in the second sentence of subsection (1).

Amendments

The 1971 amendment deleted "first class" before "school district" in the first sen-

23-3028. Copies of precinct registers available to any person upon written request—charge. Upon written request, the registrar shall furnish any person a copy of the official precinct registers. Upon delivery, the registrar shall collect a charge of five cents (\$.05) for each name entered in the official register.

History: En. Sec. 47, Ch. 368, L. 1969.

23-3029. Repealed.

Repeal

Section 23-3029 (Sec. 48, Ch. 368, L. 1969), relating to penalty for violations of

act, was repealed by Sec. 49, Ch. 334, Laws 1977.

23-3030. Repealed.

Repeal

Section 23-3030 (Sec. 1, Ch. 126, L. 1973), relating to cancellation of registra-

tion of deceased electors, was repealed by Sec. 76, Ch. 365, Laws 1977.

CHAPTER 31

ELECTION PRECINCTS

Section

23-3101. Establishment of election precincts—change of boundaries—certification of changes—designation—map—boundary to conform to wards or school districts.

23-3102. Ward boundaries, certification of changes—map.

23-3103. Designation of polling place.

23-3101. Establishment of election precincts—change of boundaries—certification of changes—designation—map—boundary to conform to wards or school districts. (1) The territorial unit for elections is the election precinct.

(2) The commissioners of each county shall establish a convenient number of election precincts equalizing the number of electors in each precinct as nearly as possible.

(3) The commissioners may change the boundaries of precincts but not between January 1 and December 1 in any year during which a general biennial election will be held, except that the commissioners may change the boundaries of precincts in the year during which a general biennial election will be held when the changes are required to make precinct boundaries conform to legislative district boundaries following the adoption of reapportionment plans under article V, section 14, of the 1972 Montana constitution. In those instances, the changing of precinct boundaries must be accomplished within sixty (60) days of the filing of the final reapportionment plan.

(a) All changes must be certified to the registrar three (3) days or less after the change is made.

(b) All election precincts shall be designated by numbers, names, or both.

(c) Not more than ten (10) days after an order of the commissioners has established or changed the boundaries of an election precinct, the commissioners shall cause to be prepared and delivered a map to the registrar showing the borders of all precincts and school districts within the county.

(4) The boundaries of election precincts may conform to the wards of cities of the first, second, and third class and the boundaries of first class school districts.

(5) A ward or school district may be divided into two (2) or more precincts, and a precinct may be divided into two (2) or more polling places.

(6) In cities not of the first, second, or third class, precincts may include two (2) or more wards, or may comprise territory included by one (1) or more wards together with contiguous territory lying outside the incorporated limits of the cities.

History: En. Sec. 18, Ch. 368, L. 1969; amd. Sec. 1, Ch. 171, L. 1973.

Amendments

The 1973 amendment added to the first paragraph of subsection (3) the clause

and sentence relating to precinct boundary changes following the adoption of reapportionment plans; substituted "may conform" for "must conform" in subsection (4); and made a minor change in phraseology.

23-3102. Ward boundaries, certification of changes—map. Not more than ten (10) days after ward boundaries have been changed, the city council must certify any changes or alteration in the ward boundaries to the registrar and deliver to him a map showing boundaries of the wards, the streets, avenues and alleys by name and the wards by numbers.

History: En. Sec. 19, Ch. 368, L. 1969.

23-3103. Designation of polling place. The commissioners shall make an order designating the polling place for each precinct, at the session at which election judges are appointed. Such order may provide for polling places to be located outside the boundaries of the precinct.

Not more than ten (10) nor less than three (3) days before an election, the registrar or city clerk shall publish in a newspaper of general circulation in the county, a statement of the locations of the precinct polling places.

History: En. Sec. 20, Ch. 368, L. 1969; amd. Sec. 1, Ch. 169, L. 1974.

Amendments

The 1974 amendment rewrote this section. Prior to amendment it read "The commissioners shall make an order designating the place within each precinct where the election will be held at the session at which election judges are appointed. Copies of the order must be posted immediately in three (3) public places in the precinct."

Effective Date

Section 2 of Ch. 169, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 11, 1974.

Changing Designation

Where a board of county canvassers refused to canvass election returns from a precinct on the ground that it appeared upon the face of the returns that the election had not been held at the place designated by the board of county commissioners, and on application for writ of mandate to compel them to act, nothing was shown affirmatively by pleadings or otherwise that the judges of election at the precinct had not pursued this section giving them authority to change the place of election upon two days' notice if for any reason it cannot be held at the place appointed, it will be presumed that official duty was regularly performed by them and that they did change it, and the writ will issue commanding action. State ex rel. Moore v. Patch, 65 M 218, 225, 211 P 202.

CHAPTER 32

JUDGES AND CLERKS OF ELECTIONS

Section

- 23-3201. Appointment of election judges and clerks—second board of election judges—duties.
- 23-3202. Manner of choosing election judges and clerks—vacancies—candidates and their relatives ineligible—exceptions.
- 23-3203. Judges and clerks to serve until others appointed.
- 23-3204. Registrar to notify judges and clerks of their appointment and of impending general elections—judges to post notices of election.
- 23-3205. Oath of judges and clerks—may administer oaths.
- 23-3206. Instruction of judges and clerks.
- 23-3207. Compensation of judges and clerks.

23-3201. Appointment of election judges and clerks—second board of election judges—duties. (1) At their regular meeting next preceding a general primary election, the commissioners shall appoint five (5) election judges and two (2) clerks for each precinct having two hundred (200) or more electors and three (3) election judges and two (2) clerks for each precinct having less than two hundred (200) electors. Judges for new precincts shall be appointed based upon the estimated number of electors.

(2) If a precinct has three hundred fifty (350) or more electors, the commissioners may appoint a second board of five (5) election judges and two (2) clerks who shall have the same qualifications as the first board. The second board shall:

- (a) Meet at their respective polling places as ordered;
- (b) Count and tabulate ballots as soon as the first board has completed their duties in regard to the voting.
- (3) If counting and tabulating the ballots is not completed by 8 a. m. on the day following the election, the first board shall reconvene and

relieve the second board until 8 p. m. when the second board shall again reconvene and relieve the first board until the ballots are counted and tabulated.

(4) The election judges constituting the boards shall number the ballots and count the tally upon the tally sheets and indicate upon the tally sheets the work of each board. The board completing the county shall certify the returns as required by law.

History: En. Sec. 49, Ch. 368, L. 1969;
amd. Sec. 1, Ch. 258, L. 1971.

Amendments

The 1971 amendment inserted "and two (2) clerks" in two places in subsection (1) and in one place in subsection (2).

23-3202. Manner of choosing election judges and clerks—vacancies—candidates and their relatives ineligible—exceptions. (1) The election judges and clerks shall be chosen from lists of qualified voters submitted by the two (2) major political parties thirty-five (35) days or more before the commissioners meeting which precedes the next primary election.

(2) The list of each party may contain twice the number of election judges and clerks to be appointed and not more than a majority may be appointed from one (1) political party for each precinct. Judges so appointed must be a member of the political party they are to represent.

(3) The commissioners may appoint election judges and clerks in their discretion to fill vacancies or if a major political party fails to submit a list of election judges.

(4) No person shall be appointed to serve as an election judge or election clerk who is a candidate, spouse of a candidate, or related to a candidate for office within the second degree of consanguinity. However, this subsection does not apply to school district elections nor to candidates for precinct committeeman or committeewoman.

History: En. Sec. 50, Ch. 368, L. 1969;
amd. Sec. 2, Ch. 258, L. 1971; amd. Sec. 1,
Ch. 125, L. 1973.

clerks" in subsections (1), (2), and (3);
and substituted "may" for "must" after
"The list of each party" in subsection (2).

The 1973 amendment added the second sentence to subsection (2).

Amendments

The 1971 amendment inserted "and

23-3203. Judges and clerks to serve until others appointed.

(1) The election judges and clerks continue to be judges of all elections held in their precincts until other judges and clerks are appointed.

(2) The commissioners shall fill vacancies which occur in the office of election judge or clerk.

History: En. Sec. 51, Ch. 368, L. 1969;
amd. Sec. 3, Ch. 258, L. 1971.

Amendments

The 1971 amendment deleted former subsection (1) reading, "The election judges may appoint two (2) persons having the

same qualifications as themselves to act as clerks of the election who serve at the pleasure of the judges"; redesignated former subsections (2) and (3) as subsections (1) and (2); inserted "and clerks" in two places in subsection (1); and added "or clerk" in subsection (2).

23-3204. Registrar to notify judges and clerks of their appointment and of impending general elections—judges to post notices of election.

(1) The registrar must notify the election judges and clerks in writing of their appointment.

(2) Twenty (20) days or more before any general election, the registrar shall mail two (2) notices of the election to the election judges. The notices shall be in the form prescribed by the secretary of state.

(3) Ten (10) days or more prior to the election, the election judges shall post one (1) notice at the place where the election will be held and the other in one (1) of the most public places in the precinct.

History: En. Sec. 52, Ch. 368, L. 1969; Amendments

amd. Sec. 4, Ch. 258, L. 1971.

The 1971 amendment inserted "and clerks" in subsection (1).

23-3205. Oath of judges and clerks—may administer oaths. (1) Before votes are cast, the election judges and clerks must take and subscribe the official oath prescribed by the constitution. The election judges may administer the oath to each other and to the clerks.

(2) Any election judge or a clerk may administer and certify oaths required during an election.

History: En. Sec. 53, Ch. 368, L. 1969.

23-3206. Instruction of judges and clerks. (1) Before each election, all election judges and clerks who do not possess a certificate of instruction shall be instructed by a person named by the commissioners in the powers, duties, and liabilities of election judges.

(2) The instructor shall call meetings as necessary.

(a) The election judges and clerks shall attend each meeting and receive at least two (2) hours of instruction.

(b) Each election judge and clerk shall receive compensation fixed by the commissioners at the prevailing federal minimum wage for instruction to be paid at the same time and in the same manner as for services on election day.

(3) Each judge and clerk shall receive a certificate of completion from the instructor upon completion of the course. Each certificate is valid for a period of two (2) years.

(4) No person shall serve as election judge or clerk without a valid certificate. However, this does not apply to persons filling vacancies in emergencies.

(5) Notice of place and time of instruction must be given to the county chairmen of the two (2) major political parties by the commissioners.

History: En. Sec. 54, Ch. 368, L. 1969;
amd. Sec. 5, Ch. 258, L. 1971.

clerks" in subdivisions (1), (2) (a), (2) (b), and (3); and inserted "or clerk" in subsection (4).

Amendments

The 1971 amendment inserted "and

23-3207. Compensation of judges and clerks. The compensation of election judges and clerks shall be fixed by the commissioners at the prevailing federal minimum wage and be paid from county funds. The commissioners shall audit the accounts.

History: En. Sec. 55, Ch. 368, L. 1969.

CHAPTER 33

PRIMARY ELECTIONS AND NOMINATIONS BY CERTIFICATE

Section

- 23-3301. Date of primary election—candidates to be selected.
- 23-3302. Primaries in cities over certain size—procedure.
- 23-3303. Notices of election.
- 23-3304. Declaration of nomination.
- 23-3305. Deadline for filing nominating declarations.
- 23-3306. Register of candidates—public record—disposition of pollbooks, tally sheets, ballots, etc.
- 23-3307. Arrangement of information concerning candidates—duties of secretary of state—duties of registrar or city clerk.
- 23-3308. Arrangement of ballots.
- 23-3309. Official and sample ballots—preparation and number.
- 23-3310. Election clerks' and judges' duties upon closing of polls.
- 23-3311. Tally sheets—keeping and announcing the tally.
- 23-3312. Duties of election clerks and judges after canvassing votes—seal.
- 23-3313. Abstracts of votes—when and how made.
- 23-3314. Canvass by secretary of state—governor's certificate of nomination and proclamation—decision by lot in event of tie.
- 23-3315. Error in ballot or other wrongful or neglectful act.
- 23-3316. Contest—notice—hearing—how tried and decided—certificate.
- 23-3318. Certificates of nomination by individuals or parties not appearing on preceding general election ballot—requisites—applicability.
- 23-3318.1. Determination of number of signatures required in census divisions.
- 23-3319. Certificates of nominations to be preserved—certification of candidates' names and descriptions—statement of votes received by candidate.
- 23-3320. Parties governed by act—right to use of party name—printing of candidates' names on ballots—parties that may nominate by certificate.
- 23-3321. Declining nomination—vacancies before and after primary.
- 23-3322. Date of presidential primary.
- 23-3323. Ballot.
- 23-3324. Ballot listings.
- 23-3325. Nomination petition.
- 23-3326. Submission and verification of petition.
- 23-3327. Notification of candidates.
- 23-3328. Delegates to national presidential nominating conventions.

23-3301. Date of primary election—candidates to be selected. The primary election shall be held on the first Tuesday in June preceding any general election to select candidates for:

- (1) United States senators and representatives in Congress;
- (2) Other elective state, district, and county officers;
- (3) Delegates to any constitutional convention who will be chosen at the ensuing general election;
- (4) County central committeemen and committeewomen by the political parties.

History: En. Sec. 56, Ch. 368, L. 1969.

DECISIONS UNDER FORMER LAW

Constitutional Convention

Legislative assembly was not empowered to provide for nomination and election of delegates to constitutional convention under article XIX, sec. 8 of the 1889 constitution solely by nonpartisan means,

since this would be a substantial change from manner of election and nomination provided for under this chapter. *Forty-Second Legislative Assembly v. Lennon*, 156 M 416, 481 P 2d 330, distinguished in 159 M 176, 185, 496 P 2d 1120, 1125.

23-3302. Primaries in cities over certain size—procedure. In cities having a population of three thousand five hundred (3,500) or more as shown by the most recent federal or state census:

(1) The nomination of candidates by primary election for city offices shall be subject to the provisions of this chapter;

(2) Political parties shall file declarations of nominations for city offices with the city clerk;

(3) The duties of the city clerk are the same as the registrar in conducting the primary elections, and the city clerk shall send notices of the primary election in the same manner as registrars send notices for nominations for county offices at primary elections;

(4) On the fourteenth day preceding a city election, the cities shall hold primary elections;

(5) If no declarations are filed forty (40) days or more before the primary election, no primary election shall be held and the city clerk shall certify to the registrar thirty-five (35) days or more before the date of the primary election that no petitions have been filed;

(6) The council shall;

(a) establish city voting precincts and wards,

(b) appoint city judges and clerks of elections and other officers necessary for the election,

(c) perform other necessary duties in the same manner prescribed for city elections.

History: En. Sec. 57, Ch. 368, L. 1969; Amendments
amd. Sec. 2, Ch. 343, L. 1971.

The 1971 amendment made a minor change in punctuation.

23-3303. Notices of election. (1) Twenty (20) days before any primary election, the registrar shall prepare printed notices of the election and mail two (2) notices to each judge of election.

(2) Each judge and clerk shall immediately post the notices in public places in their precinct.

(3) Notices shall be in the form, and contain information, as prescribed by the secretary of state.

History: En. Sec. 58, Ch. 368, L. 1969.

23-3304. Declaration of nomination. (1) Each candidate in the primary election shall send a declaration of nomination to the secretary of state, registrar, or city clerk. Each candidate for governor must send a joint declaration of nomination with a candidate for lieutenant governor.

(2) Each candidate must sign the declaration and send with it the required filing fee or in the case of a candidate who cannot afford the filing fee, send with it the documents required in lieu of a filing fee. The declaration of nomination shall be acknowledged by a notary public if sent by mail or by the officer of the office at which the filing is made.

(3) The declaration, when filed, is conclusive evidence that the elector is a candidate for nomination by his party.

(4) Nominating declarations are filed:

(a) in the office of secretary of state for congressional offices, state or district offices to be voted for in more than one county, members of the legislature, and judges of the district court;

(b) in the office of the registrar for county and district offices to be voted for in only one county, other than a legislator or a judge of the district court, and for precinct offices;

(c) in the office of the city clerk for all city officers.

(5) Filing fees are as follows:

(a) for offices having an annual salary of \$1,000 or less, \$10, except candidates for the legislature must pay \$15;

(b) for offices having an annual salary of more than \$1,000, 1% of the total annual salary;

(c) for the office of county commissioner:

(i) in counties of the first class, \$40;

(ii) in counties of the second class, \$35;

(iii) in counties of the third class, \$30;

(iv) in counties of the fourth class, \$25;

(v) in counties of other classes, \$10;

(d) for offices in which compensation is paid in fees, \$5;

(e) for state, county, and precinct committeemen, delegates to national conventions, and presidential electors, no fees are required.

(6) A person nominated by having his name written in on the primary ballot and desiring to accept the nomination may not have his name printed on the general election ballot unless he:

(a) files with the secretary of state, registrar, or city clerk within at least 10 days after the primary a written declaration indicating his acceptance of the nomination;

(b) pays the required filing fee or if indigent, complies with subsection (7);

(c) received at least 5% of the votes cast for the office at the last preceding general election.

(7) If a person is unable to pay a filing fee, the filing officer shall accept the following documents in lieu of a filing fee:

(a) from a write-in candidate, a verified statement that he is unable to pay the filing fee;

(b) from a candidate for nomination, a verified statement that he is unable to pay the filing fee and a written petition for nomination as a candidate that meets the following requirements:

(i) contains the name of the office to be filled, the candidate's name, residence, occupation, and business address;

(ii) is signed by 5% or more of the total vote cast for the successful candidate for the same office at the next preceding general election; and

(iii) is signed by electors residing within the political division of the state in which the candidate petitions for nomination.

(8) The declaration for nomination shall be in the form and contain the information prescribed by the secretary of state. Every declaration must be signed by the elector seeking nomination.

History: En. Sec. 59, Ch. 368, L. 1969; amd. Sec. 1, Ch. 23, L. 1973; amd. Sec. 1, Ch. 246, L. 1975; amd. Sec. 14, Ch. 365, L. 1977.

Amendments

The 1973 amendment added the second sentence to subdivision (1); substituted "legislature" for "legislative assembly" in subdivision (5) (a); deleted "or lieutenant governor" from subdivision (5) (a); and made a minor change in phraseology.

The 1975 amendment inserted in subsection (2) "or in the case of a candidate who cannot afford the filing fee, send with

it the documents required in lieu of a filing fee. The declaration of nomination shall"; inserted "within" before "at least ten (10) days" in subdivision (6) (a); inserted subsection (7) and redesignated former subsection (7) as subsection (8).

The 1977 amendment inserted "other than a legislator or a judge of the district court" in subdivision (4)(b); deleted "township and" before "precinct offices" in subdivision (4)(b); added "or if indigent, complies with subsection (7)" to subdivision (6)(b); and made minor changes in phraseology, punctuation and style.

DECISIONS UNDER FORMER LAW

Time for Filing Acceptance by Write-in Candidate

Under prior statute requiring write-in candidate to file within ten days after "election," the term "election" meant the day of election and not the day on which the canvass of the ballots was completed,

hence a candidate for house of representatives who filed acceptance 18 days after election was not entitled to a writ of mandate to compel the county clerk to include his name on the general election official ballot. *State ex rel. Wulf v. McGrath*, 111 M 96, 97, 106 P 2d 183.

23-3305. Deadline for filing nominating declarations. Nominating declarations shall be filed not later than 5 p.m., 40 days before the date of the primary election.

History: En. Sec. 60, Ch. 368, L. 1969; amd. Sec. 15, Ch. 365, L. 1977.

Amendments

The 1977 amendment deleted second and third sentences which read: "Declarations for nomination to an office filled by election throughout the state, as judge of a district court, to an office filled by election

in more than one (1) county, or as a member of the legislative assembly shall be filed with the secretary of state. Declarations for nominations to an office filled by election in one county, or district or city shall be filed with the registrar or city clerk"; and made a minor change in punctuation.

23-3306. Register of candidates—public record—disposition of poll-books, tally sheets, ballots, etc. (1) The secretary of state, registrar, and city clerk shall keep a "Register of Candidates for Nomination at the Primary Nominating Election." The entries in the register shall contain on separate pages for each political party showing:

(a) The title of the office sought, and the name and residence of each candidate;

(b) The name of his political party;

(c) The date of receiving the declaration for nomination signed by the candidate;

(d) Other information as may aid in arranging the official ballot.

(2) Immediately after the canvass of votes of the primary election, the officer shall enter in the register the date of entry, the name of each candidate nominated, the office for which he is nominated, and the name of the party making the nomination.

(3) When filed, the registers, declarations of nomination, letters and notices, and other documents required by law are public records and open

to inspection under proper regulation. Certified copies shall be available upon payment of the fee.

(4) The registrar shall keep all pollbooks, tally sheets, ballots, ballot stubs, and other documents for one (1) year, and then he shall destroy them.

History: En. Sec. 61, Ch. 368, L. 1969.

23-3307. Arrangement of information concerning candidates—duties of secretary of state—duties of registrar or city clerk. (1) Not more than forty (40) days and not less than thirty-two (32) days before the date of the primary election, the secretary of state shall:

(a) Arrange all names and information concerning candidates contained in the valid nominating declarations;

(b) Certify the arrangement under state seal, file it in his office, and transmit a duplicate by registered mail to each registrar;

(c) Post a duplicate in a conspicuous place in his office until after the primary election.

(2) Not more than thirty (30) days, and not less than twenty (20) days before the date of the primary election, the registrar or city clerk shall:

(a) Arrange, as required by law, the names and other information concerning the candidates and parties named in the valid nominating declarations which have been certified to him or filed with him;

(b) Certify the arrangement, file it in his office, and post a duplicate in a conspicuous place in his office until after the primary;

(c) Have colored sample ballots and the official ballots printed as required by law.

History: En. Sec. 62, Ch. 368, L. 1969.

23-3308. Arrangement of ballots. (1) At the primary, there shall be a ballot for each political party entitled to participate. Each ballot shall be printed on a separate sheet of white paper of the same size, folded, and securely fastened at the top.

(2) Candidates' names shall be arranged alphabetically by surnames, under the offices and under the proper party designation. The names of the candidates for governor and lieutenant governor shall be arranged by the surname of the candidate for governor. When two or more persons are candidates for nomination for the same office, the registrar shall divide the ballot to provide a rotation of the names of the candidates as follows:

(a) divide all county ballot forms into sets equal in number to the greatest number of candidates for nomination or election to any office;

(b) arrange the sets so that candidates' names are rotated by removing one name from the top of the list for each nomination or office and place the name or number at the bottom of the list for each successive set of ballot forms; however, in printing ballots for use in any one precinct, only one set shall be used and they shall be identical.

(3) If an elector writes the name of a person upon a ballot and the person's name appears as a candidate upon another ballot, the ballot shall

count for the person only as a candidate of the party upon whose ticket his name is written.

(4) If a person is nominated upon more than one ticket, not later than 10 days after the election he shall file written notification with the secretary of state, registrar, or city clerk of the party under which his name is to appear upon the ballot for the general election, and, if he fails to notify the proper officers, his name shall appear under the party with whom his nominating declaration was first filed.

(5) If a person fails to be nominated upon the party ticket contained in his nominating declaration, his name may not be printed upon any ballot with party designation.

(6) Title 23 and Title 37 do not preclude an elector from having his name printed upon the ballot as an independent candidate, and no candidate may have his name printed on more than one ticket.

(7) Ballots shall be printed on white paper in the form of the Australian ballot, and the candidates of each party shall be printed on a separate ticket.

(8) After preparing his ballot, the elector shall detach it from the remaining tickets and fold it so that the face is concealed and the official stamp is seen.

(9) The elector shall fold the remaining tickets, vote the marked ballot without leaving the polling place, and deposit the remaining tickets in a separate box marked as the blank ballot box.

(10) Immediately after the recount period, as provided in 23-4103, the tickets deposited in the blank ballot box shall be destroyed.

History: En. Sec. 63, Ch. 368, L. 1969; amd. Sec. 2, Ch. 28, L. 1973; amd. Sec. 16, Ch. 365, L. 1977.

Amendments

The 1973 amendment inserted the second sentence in subdivision (2).

The 1977 amendment substituted "Title

23 and Title 37" at the beginning of subsection (6) for "this act"; substituted subsection (10) for "Immediately after the recount period, the election judges, shall, without examination, destroy the tickets deposited in the blank ballot box"; and made minor changes in phraseology, punctuation and style.

23-3309. Official and sample ballots—preparation and number. (1) Ballots equal to the number of voters entitled to vote in the primary shall be printed and furnished to each election precinct.

(2) If a political party desires sample ballots its political committee may order them from the registrar or city clerk and pay the costs of printing. The registrar or city clerk shall order delivery in writing of the sample ballots and no sample ballots shall be printed without an order from the registrar or city clerk.

(3) Sample ballots shall be duplicates of the official ballot, but shall not be printed on white paper, shall not have the same margins, and shall not have perforated stubs.

History: En. Sec. 64, Ch. 368, L. 1969.

23-3310. Election clerks' and judges' duties upon closing of polls. Immediately after the polls are closed at a primary election, the election clerks and judges shall open the ballot boxes and:

- (1) Count the ballots cast by each political party and fasten the ballots cast for each political party into separate files,
- (2) Take the tally sheets provided by the registrar and count the ballots for each political party,
- (3) Certify the number of votes cast for each candidate for each office,
- (4) Place the counted ballots in the box.

History: En. Sec. 65, Ch. 368, L. 1969.

23-3311. Tally sheets—keeping and announcing the tally. (1) The registrar shall furnish tally sheets for each political party having candidates in the primary election for each voting precinct. Tally sheets shall contain the names of the candidates, names of the political parties designated at the head, and be numbered in the order in which the names appear on the official ballot.

- (2) Tally sheets shall show:
 - (a) the number and name of each person voted for;
 - (b) the office for nomination to which each person was voted for;
 - (c) the total number of votes cast for each candidate for nomination.
- (3) The election clerks and judges shall audibly announce the tally or count and shall keep the tally in the form prescribed by the secretary of state. The tally or count shall be certified by the election clerks and judges.
- (4) The election clerks shall in ink:
 - (a) keep tally upon the prescribed tally sheet of each political party;
 - (b) total the number of tallies and write the total immediately to the right of the last tallies for each candidate and also in the columns headed "total vote";
 - (c) prepare the certificate required by subsection (3);
 - (d) immediately upon completion of the count, sign the tally sheets, and each clerk shall certify which sheets were kept by him.
- (5) If the judges are satisfied with the correctness of the tally sheets, they shall sign all the tally sheets.
- (6) The election clerks shall then prepare a statement of that portion of the tally sheets showing the number and name and political party of each candidate for nomination and the office and total votes received by each in the precinct and shall prepare the certificate. The election clerks and judges who complete the count shall sign the statement and immediately post it in a conspicuous place outside of the polls. The statement shall remain posted for 10 days.

History: En. Sec. 66, Ch. 368, L. 1969; **Amendments**
amd. Sec. 17, Ch. 365, L. 1977.

The 1977 amendment deleted "chairman and" before "judges" in subsection (5); and made minor changes in style, phraseology and punctuation.

23-3312. Duties of election clerks and judges after canvassing votes—
seal. (1) Immediately after canvassing votes, the election clerks and

judges who complete the count shall enclose the pollbooks in separate envelopes and securely seal them. The election clerks and judges shall:

(a) enclose the tally sheets in separate envelopes and securely seal them;

(b) enclose the precinct registers in separate envelopes and securely seal them;

(c) enclose all ballots fastened together and in separate envelopes and securely seal them;

(d) specify in ink the contents and address each package to the registrar of the county in which the election precinct is situated;

(e) mark the sealed ballot packages on the outside showing what numbers are contained, but once sealed they may not be opened until ordered by the proper court.

(2) When the count is completed, the sealed ballots shall be placed in two ballot boxes, the boxes locked and the seal of the board pasted over the keyhole and rim of the lid so that to open the box the seal must be broken. The registrar or those persons making the abstracts of the votes may not break the seal nor may anyone break the seal except upon court order in case of contest or on order of the commissioners when the boxes are needed for the ensuing election.

History: En. Sec. 67, Ch. 368, L. 1969;
amd. Sec. 18, Ch. 365, L. 1977.

Amendments

The 1977 amendment substituted "those

persons" in the second sentence of subsection (2) for "the canvassers"; and made minor changes in phraseology, punctuation and style.

23-3313. Abstracts of votes—when and how made. (1) At 8 a.m. on the third day after the close of any primary election or at 8 a.m. on a day sooner if all the returns are in, the registrar, taking two assistants who are justices of the peace, county commissioners, or either, shall open the returns and make abstracts of the votes.

(2) Abstracts of votes for nomination of each party for congressional offices, state or district offices to be voted on in more than one county, members of the legislature, and judges of the district court shall be on one sheet, separately for each political party. The registrar, immediately after making the abstracts of votes, shall send by mail a copy of each of the abstracts to the secretary of state.

(3) Abstracts of votes for county and district offices to be voted on in only one county, other than a legislator or a judge of the district court, and precinct offices shall be placed on separate sheets for each political party, and the registrar shall certify the nomination for each party and enter upon his register of nomination the name of each of the persons having the highest number of votes for nomination. He shall notify each person who is nominated by mail.

(4) If there is a tie for the same nomination in one party, the registrar shall notify the affected persons to come to his office at a time set by the registrar. The registrar shall then decide publicly by lot which of the persons is the nominee. The registrar shall enter the name of the person chosen as nominee upon his register of nomination.

(5) The registrar shall, on receipt of the primary returns, make out a certificate stating the compensation the election clerks and judges are entitled to and transmit this certificate to the commissioners. The commissioners shall order the compensation paid out of the county treasury.

(6) In all primary elections, the person having the highest number of votes for nomination to any office is the nominee for his political party for that office.

History: En. Sec. 68, Ch. 368, L. 1969; amd. Sec. 22, Ch. 315, L. 1974; amd. Sec. 19, Ch. 365, L. 1977.

Amendments

The 1974 amendment substituted "public service commissioners" for "railroad commissioners" in subsection (2).

The 1977 amendment substituted the enumeration of offices in subsection (2) for "governor, lieutenant governor, secretary of state, attorney general, state auditor, superintendent of public instruction, public service commissioners, clerk of the

supreme court, state treasurer, justices of the supreme court, United States senators, United States representatives, judges of the district court, and members of the legislative assembly"; substituted the second sentence of subsection (2) for "and shall be forthwith transmitted to the secretary of state, as required by section 23-3314"; inserted "and district offices to be voted on in only one county, other than a legislator or a judge of the district court" in subsection (3); and made minor changes in style.

23-3314. Canvass by secretary of state—governor's certificate of nomination and proclamation—decision by lot in event of tie. (1) The secretary of state shall, in the presence of the governor and the superintendent of public instruction, proceed not later than 15 days after the date of the primary election to canvass the votes given for nomination for congressional offices, state or district offices to be voted on in more than one county, members of the legislature, and judges of the district court.

(2) The governor shall grant a certificate of nomination to the person having the highest number of votes for each office and shall issue a proclamation declaring the nomination of each person by his party.

(3) When a tie exists between two or more persons for nomination in the same party, the secretary of state shall immediately give notice to the persons tied to attend in person or by attorney at his office at a time appointed by him. He shall then publicly decide by lot which person is nominated by his party. The governor shall issue his proclamation declaring the nomination of that person.

History: En. Sec. 69, Ch. 368, L. 1969; amd. Sec. 3, Ch. 28, L. 1973; amd. Sec. 22, Ch. 315, L. 1974; amd. Sec. 20, Ch. 365, L. 1977.

Amendments

The 1973 amendment inserted "and lieutenant governor" after "governor" in subdivision (2); and deleted "lieutenant governor" later in subdivision (2).

The 1974 amendment substituted "public service commissioners" for "railroad commissioners" in subsection (2).

The 1977 amendment deleted a former subsection (1) which read: "the registrar, immediately after making the abstracts of votes, shall send a copy of each of the abstracts by mail to the secretary of state"; redesignated subsections (2)

through (4) as subsections (1) through (3); substituted "superintendent of public instruction" near the beginning of subsection (1) for "state treasurer"; substituted the enumeration of offices at the end of present subsection (1) for "governor and lieutenant governor, United States senator, United States representative, attorney general, superintendent of public instruction, public service commissioners, secretary of state, state treasurer, state auditor, justices of supreme court, clerk of the supreme court, judges of the district court, members of the legislative assembly, and all other officers voted in any district comprising more than one county"; and made minor changes in style.

23-3315. Error in ballot or other wrongful or neglectful act. (1) The court shall order an officer or person charged with a wrongful act or neglect to perform his duties or show cause why the order should not issue whenever it appears by affidavit to the district court, to the supreme court, or to a supreme court judge:

(a) that an error or omission has occurred or is about to occur in the printing of the name of any candidate or other matter on the official primary nominating election ballots;

(b) that any error has been or is about to be committed in the printing of the ballots;

(c) that the name of any person or any other matter has been or is about to be wrongfully placed upon the ballots;

(d) that any wrongful act has been performed by any judge or clerk of the primary election, registrar, canvassing board or member, or by any person charged with a duty under Title 23 or Title 37 or that any neglect of duty by any of the persons has occurred or is about to occur.

(2) Failure to obey the court order is contempt.

(3) Any person aggrieved by the refusal or failure of any person to perform any duty required by Title 23 or Title 37, without derogation of any other right or remedy, is entitled to seek a writ of mandamus in the district court and the proceeding shall be immediately heard and decided.

History: En. Sec. 70, Ch. 368, L. 1969;
amd. Sec. 22, Ch. 365, L. 1977.

Amendments

The 1977 amendment substituted "Title 23 or Title 37" in two places for "this act"; and made minor changes in phraseology, punctuation and style.

23-3316. Contest—notice—hearing—how tried and decided—certificate.

(1) Five days or less after a person has been nominated, any person wishing to contest the nomination to any state, county, district, precinct, or city office shall give notice in writing to the person whose nomination he intends to contest briefly stating the cause for the contest.

(2) The contestant shall make application to the district court judge in the county where the contest is to be had. The judge shall then set the time for the hearing.

(3) The contestant shall serve notice 3 days before the hearing is scheduled. The notice shall state the time and place of the hearing.

(4) The judge of the district court shall hear and determine the case and make all necessary orders for the trial of the case and carrying his judgment into effect. The order of the judge shall express the will of a majority of the legal voters of the political party, as indicated by their votes, disregarding technicalities or errors in spelling.

(5) Each party is entitled to subpoenas.

(6) The registrar shall issue a certificate to the person declared nominated by the court. The certificate shall be conclusive evidence of the right of the person to hold the nomination.

History: En. Sec. 71, Ch. 368, L. 1969;
amd. Sec. 23, Ch. 365, L. 1977.

Cross-Reference

Application of Montana Rules of Civil Procedure to contest of nomination, see M. R. Civ. P., Rule 81(a), Table A.

Amendments

The 1977 amendment deleted "township" before "precinct" in subsection (1); and made minor changes in style.

23-3317. Repealed.

Repeal

Section 23-3317 (Sec. 77, Ch. 368, L. 1969), relating to penalty for violations

by election officials and candidates, was repealed by Sec. 49, Ch. 334, Laws 1977.

23-3318. Certificates of nomination by individuals or parties not appearing on preceding general election ballot—requisites—applicability. Except as provided in subsection (6) of this section, nominations for public office by an individual or a political party which did not appear on the ballot in the next preceding general election may be made by executing a certificate of nomination.

(1) The certificate must be in writing and contain:

- (a) The name of a candidate for the office to be filled;
- (b) His residence, his occupation, and his business address.

(2) If a certificate is filed by a political party which did not appear on the ballot in the next preceding general election, it must contain the party name and in five (5) words or less the principle which such body represents.

(3) The certificate must be signed by electors residing within the state and district, or political division in which the officer or officers are to be elected. Each elector signing a certificate shall add to his signature his place of residence, and his business address.

(4) The number of signatures must be five per cent (5%) or more of the total vote cast for the successful candidate for the same office at the next preceding general election.

(5) Except as provided in subsection (6), such certificates shall be filed on or before the filing deadline for the primary election as established by law. Certificates of nomination of candidates for municipal offices must be filed with the clerks of the respective municipal corporations not more than thirty (30) days and not less than fifteen (15) days previous to the day of election.

(6) A person who desires to run for president or vice-president as an independent candidate, must file a certificate of nomination with the secretary of state 90 days prior to the date of the general election. The certificate must have the signatures of electors equal to five per cent (5%) or more of the legal votes cast for governor at the next preceding general election. He must also nominate the required number of electors allowable to Montana and certify the names to the secretary of state.

(7) This section shall not apply to nominations for special elections or to fill vacancies.

History: En. Sec. 78, Ch. 368, L. 1969; amd. Sec. 1, Ch. 59, L. 1971; amd. Sec. 1, Ch. 237, L. 1973.

Amendments

The 1971 amendment added the second sentence of paragraph (5), relating to the filing of certificates of nomination by candidates for municipal offices.

The 1973 amendment inserted "general" before "election" throughout the section; substituted "Except as provided in subsection (6), such certificates shall be filed on or before the filing deadline for the

primary election as established by law" for "The candidates for nomination shall file the certificates ninety (90) days prior to the date of the general election" in subsection (5); and inserted "90 days prior to the date of the general election" at the end of the first sentence in subsection (6).

Effective Date

Section 2 of Ch. 59, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 24, 1971.

DECISIONS UNDER FORMER LAW

Error in Certificate

Under the law governing conventions and primary meetings, an error in the party name on the certificate of nomination rendered it void. State ex rel. Scharnikow v. Hogan, 24 M 397, 401, 62 P 683.

The inadvertent failure to include the name of a convention nominee for a certain office in the certificate of nominations renders the certificate insufficient. State ex rel. Galen v. Hays, 31 M 227, 231, 78 P 301.

Party Candidate

It is by means of the certificate of nomination that the county clerk is informed how to prepare the official ballot for the electors. The secretary of state cannot certify a candidate nominated by electors, as the candidate of a political

party, for clearly he is not such a candidate and has no place in a group of candidates certified as nominated by a regular political party convention or organization, under the name of the party making such nomination. State ex rel. Woody v. Rotwitt, 18 M 502, 510, 511, 46 P 370.

Time of Filing

Prior law requiring certificates of nomination to be filed with the secretary of state not more than sixty nor less than thirty days before election was mandatory and a certificate of original nominations made at a party convention could not be filed less than thirty days before election. State ex rel. Galen v. Hays, 31 M 227, 230, 78 P 301.

23-3318.1. Determination of number of signatures required in census divisions. In the case of candidates for the Montana House of Representatives, the Montana Senate, and the Montana Constitutional Convention who may be required to run in districts embracing census enumerator divisions located in more than one county, the secretary of state shall, for those counties split along census enumerator divisions, determine the number of signatures needed for nominating petitions of independent candidates in such districts. The determination shall be based on the most recent federal census population figures for the district.

History: En. Sec. 1, Ch. 6, 2nd Ex. L. 1971.

Title of Act

An act to authorize the secretary of state to determine the number of signatures needed for nominating petitions of independent candidates; and providing an effective date.

Effective Date

Section 2 of Ch. 6, 2nd Ex. Laws 1971 read "This act is effective on its passage and approval and shall remain in effect until such time as the procedures in section 23-3318, R. C. M. 1947, can be followed."

23-3319. Certificates of nominations to be preserved—certification of candidates' names and descriptions—statement of votes received by candidate. (1) The secretary of state, registrars, and city clerks shall preserve all certificates of nominations for 1 year. All certificates shall be open to public inspection under rules adopted by the various offices.

(2) Forty-five days or more before an election, the secretary of state shall certify to the registrars the name and description of each person nominated, as specified in the certificates of nomination filed with him.

History: En. Sec. 79, Ch. 368, L. 1969; amd. Sec. 24, Ch. 365, L. 1977.

shall transmit to the secretary of state a statement of the number of votes cast for a person as the candidate for the independent body by which he was nominated"; and made minor changes in style.

Amendments

The 1977 amendment deleted a subsection (3) which read: "Each election board

23-3320. Parties governed by act—right to use of party name—printing of candidates' names on ballots—parties that may nominate by certificate. (1) Every political party which received three per cent (3%) or more of the total vote cast for governor at the next preceding general election in the county, district, or state for which nominations are proposed to be made, shall nominate its candidate for public office in the county, district or state under this act.

(2) Every political party, and its regularly nominated candidates, members and officers, has the sole and exclusive right to the use of the party name. No candidate for office may use any word of the name of any other political party or organization other than that by which he is nominated.

(3) An independent or nonpartisan candidate shall not use any word of the name of any existing political party or organization in his candidacy.

(4) The names of candidates for public office nominated under this act shall be printed on the official ballots for the ensuing election as the only candidates of the respective parties for public office in the same manner as the names of the candidates nominated by other methods are required to be printed on the official ballots.

(5) Any political party that did not receive three per cent (3%) or more of the total vote cast for governor, as provided in subsection (1) of this section, and any new political party about to be formed, may make nominations for public office as provided in section 23-3318.

History: En. Sec. 80, Ch. 368, L. 1969.

Presidential Electors Are Candidates for Public Office

Candidates for presidential electors were candidates for public office, within the meaning of prior section. State ex rel. Foster v. Mountjoy, 83 M 162, 168, 271 P 446.

Use of Term "Independent"

Assuming (but not deciding) that an

existing political party may use the term "Independent" in its party name, such use cannot deprive another candidate from employing that term in designating the character of his candidacy for the same office, and section prohibiting an independent candidate from using any word of the name of an existing political party has no application in such circumstances. State ex rel. Wheeler v. Stewart, 71 M 358, 361, 230 P 366.

23-3321. Declining nomination—vacancies before and after primary. (1) Twenty (20) days or more before the election, a person nominated for public office may decline the nomination by a writing sent to the office with which his nominating declaration is filed. In city elections, the declination shall be made ten (10) days or more before the election.

(2) If a vacancy occurs in the office of a candidate in case of death or removal from the state or district before the date of the primary, the vacancy shall be filled by the affected political party.

(3) When a vacancy occurs in the office of a candidate after the primary and before the general election in any district however constituted, the vacancy shall be filled as follows:

(a) The vacancy shall be filled by a committee of three (3) members selected from each county or district by the county central committees of the county or district of the affected political party.

(b) The secretary of the committee shall transmit a certificate to the secretary of state with the information contained on the original certificate plus the cause of the vacancy, the name of the person nominated, the office to be filled, and the name of the person for whom the nomination was made.

(c) When the certificate is filed with the secretary of state accompanied by the proper filing fee he shall insert the name of the person nominated to fill the vacancy.

(d) If the secretary of state has certified the nominations to the registrars, he shall immediately certify to the registrars the name of the person nominated to fill the vacancy, the office to be filled, the party or political principle he represents, and the name of the person for whom the nominee is substituted.

(4) A vacancy in the position of candidate for governor or lieutenant governor shall not affect the candidacy of the other joint candidate.

History: En. Sec. 82, Ch. 368, L. 1969; amd. Sec. 5, Ch. 254, L. 1971; amd. Sec. 4, Ch. 28, L. 1973.

Amendments

The 1971 amendment substituted "any district however constituted" for "a multi-county district" in subsection (3); inserted "or district" after "from each county" in subdivision (3) (a); inserted "of the county or district" after "central committees" in subdivision (3) (a); and inserted "accompanied by the proper filing fee" in subdivision (3) (c).

The 1973 amendment added subdivision (4).

Cross-Reference

Inducement to accept or decline nomination, sec. 94-1456.

Defective Proceedings

An election will not be declared void by reason of nonprejudicial defects in the manner in which nomination was declined where question was raised after election. *Stackpole v. Hallahan*, 16 M 40, 51, 40 P 80.

Write-in Candidates

Where a successful write-in candidate at a nominating election failed to file his acceptance within ten days after election day, his subsequent resignation did not result in a vacancy which the county central committee of his party could fill. *State ex rel. Wilkinson v. McGrath*, 111 M 102, 106 P 2d 186.

Where a candidate for re-election to a county office died 24 days before election, his death known generally to electors, but his name placed on ballot and majority voted for him supposing to retain his widow, appointed to fill the vacancy, until the next general election, a write-in candidate whom they intended to defeat, receiving the highest vote cast for any living person, held, on his application for writ of mandate to compel the county canvassing board to reconvene and cause certificate of election issued to him, that write-in candidate elected and entitled to the office. *State ex rel. Wolff v. Geurkink*, 111 M 417, 426, 109 P 2d 1094, 133 ALR 304.

DECISIONS UNDER FORMER LAW

Death after Election

Former law did not empower county central committee to make an original nom-

ination of a candidate to an office to be filled at a special election where the officer-elect died after election and before

induction into office. State ex rel. Smith v. Duncan, 55 M 376, 177 P 248, distinguished in 116 M 283, 291, 149 P 2d 913.

Time for Filling Vacancies

When a convention has made a nomination, and has authorized its committee to fill any vacancy that may occur, the filling

of the vacancy by the committee upon the death or resignation of the candidate, or because the original certificate of nomination was or became insufficient or inoperative, may be made at any time before the day of election. State ex rel. Scharnikow v. Hogan, 24 M 397, 402, 62 P 683; State ex rel. Galen v. Hays, 31 M 227, 231, 78 P 301.

23-3322. Date of presidential primary. In the years in which a president of the United States is to be elected, a presidential preference primary election will be held on the same day as the primary provided for in section 23-3301, R. C. M. 1947.

History: En. 23-3322 by Sec. 1, Ch. 162, L. 1974.

Title of Act

An act to provide for a presidential preference primary election in Montana.

23-3323. Ballot. The regular ballots provided for in section 23-3308, R. C. M. 1947, shall be used for the presidential preference primary election. The presidential section of the ballot shall be placed before any other section, national, state, or local.

History: En. 23-3323 by Sec. 2, Ch. 162, L. 1974.

23-3324. Ballot listings. The presidential preference ballot shall list all candidates nominated in accordance with the provisions of this act, and shall, in addition, include a presidential ballot position which shall be designated as "no preference."

History: En. 23-3324 by Sec. 3, Ch. 162, L. 1974.

23-3325. Nomination petition. Before a presidential candidate may qualify for placement on the ballot, he must be nominated on petitions with the verified signatures of at least one thousand (1,000) qualified electors from each congressional district. The secretary of state is empowered to prescribe the form and content of the petition.

History: En. 23-3325 by Sec. 4, Ch. 162, L. 1974.

23-3326. Submission and verification of petition. Petitions of nomination for the presidential preference primary election must be presented to the county clerk and recorder of the county in which the signatures are gathered. The county clerk and recorder must verify the signatures in the manner prescribed in 37-123 and must forward the petitions to the secretary of state. The petitions must be submitted to the clerk and recorder at least 30 days before the filing deadline established in 23-3305.

History: En. 23-3326 by Sec. 5, Ch. 162, L. 1974; amd. Sec. 28, Ch. 342, L. 1977.

Repealing Clause

Section 29 of Ch. 342, Laws 1977 read "Sections 37-101 through 37-104, 37-104.1, 37-104.2, 37-104.3, 37-104.4, 37-104.5, 37-104.6, 37-104.7, 37-104.8, 37-104.9, 37-104.10, 37-105 through 37-110, and 37-201 through 37-203, R. C. M. 1947, are repealed."

Amendments

The 1977 amendment substituted "37-123" for "section 37-103, R. C. M. 1947"; and made minor changes in style.

23-3327. Notification of candidates. If the signatures and petitions fulfill the requirements of this act, the secretary of state shall immediately notify the candidates named on the petitions that they shall be placed upon the presidential preference primary election ballot, unless they file with the secretary of state a notarized affidavit that they are not a candidate for president. The notification of the candidate shall be made at least fifteen (15) days before the filing deadline established in section 23-3305, R. C. M. 1947. The affidavit of noncandidacy must reach the secretary of state by the filing deadline established in section 23-3305, R. C. M. 1947.

History: En. 23-3327 by Sec. 6, Ch. 162, L. 1974.

23-3328. Delegates to national presidential nominating conventions. The method of selection of delegates to national presidential nominating conventions is to be set by party rules. The use of the results of the presidential preference primary election by the political parties in their delegation selection systems is discretionary and is to be determined by party rules.

History: En. 23-3328 by Sec. 7, Ch. 162, L. 1974.

CHAPTER 34

POLITICAL PARTIES, COMMITTEEMEN AND COMMITTEES

- Section
23-3401. Two committeemen to be elected at primary by each party—nomination—names on party ticket.
23-3402. Committeemen as party representative—county and city central committees—term—vacancy.
23-3403. Powers of county and city central committees—role of state central committee where no county central committee exists.
23-3404. Committees to fill vacancies among nominees under certain circumstances.
23-3405. Organization of committee—meeting—county convention to elect delegates and alternates to state convention.
23-3406. Powers of parties.
23-3407. Payment of convention expenses—payment of delegates and alternates to conventions to nominate presidential electors.

23-3401. Two committeemen to be elected at primary by each party—nomination—names on party ticket. (1) Each political party shall elect at each primary election one (1) man and one (1) woman who shall serve as committeemen for each election precinct. The committeemen shall be residents and registered voters of the precinct.

(2) An elector may be placed in nomination for committeeman by a writing so stating, signed by the elector, notarized, and filed in the office of the registrar within the time for filing declarations naming candidates for nomination at the regular biennial primary election.

(3) The names of candidates for precinct committeeman of each political party shall be printed on the party ticket in the same manner as other candidates and the voter shall vote for them in the same manner as he does for other candidates.

History: En. Sec. 72, Ch. 368, L. 1969.

23-3402. Committeemen as party representative—county and city central committees—term—vacancy. (1) Each committeeman shall represent his political party for the precinct in all ward or subdivision committees formed.

(2) The committeemen in each precinct shall constitute the county central committee of the respective political parties.

(3) Committeemen who reside within the limits of a city are ex officio the city central committee of their respective political parties and have the power to make their own rules not inconsistent with those of the county central committee. However, the county central committee has the power to fill vacancies in the city central committee.

(4) Each precinct committeeman has a term of two (2) years from the date of his election.

(5) If a vacancy occurs, the remaining members of the county committee may select a precinct resident to fill the vacancy.

History: En. Sec. 73, Ch. 368, L. 1969.

23-3403. Powers of county and city central committees—role of state central committee where no county central committee exists. (1) The county and city central committee may:

(a) make rules for the government of its political party in each county not inconsistent with any of the provisions of the election laws of this state or the rules of its state political party;

(b) elect two county members of the state central committee, one of whom shall be a man and one of whom shall be a woman, elect the members of the congressional committee, and fill all vacancies and make rules in their jurisdiction.

(2) If there is no county central committee, the state central committee shall appoint a county central committee.

History: En. Sec. 74, Ch. 368, L. 1969; election laws of this state" in subdivision amd. Sec. 25, Ch. 365, L. 1977. (1)(a) for "this act"; and made minor

Amendments

The 1977 amendment substituted "the

changes in phraseology, punctuation and style.

23-3404. Committees to fill vacancies among nominees under certain circumstances. County and city central committees may make nominations to fill vacancies occurring among the candidates of their respective parties nominated for city or county offices by the primary election if the vacancy is caused by death, resignation, or removal from the electoral district but not otherwise.

History: En. Sec. 75, Ch. 368, L. 1969.

Write-in Candidate

Where a successful write-in candidate at a nominating election failed to file his acceptance within ten days after election

day, his subsequent resignation did not result in a vacancy which the county central committee of his party could fill. State ex rel. Wilkinson v. McGrath, 111 M 102, 106 P 2d 186.

DECISIONS UNDER FORMER LAW

Death after Election

Former law did not empower county central committee to make an original nomination of a candidate to an office to be filled at a special election, where the

officer-elect died after election and before induction into office. State ex rel. Smith v. Duncan, 55 M 376, 177 P 248, distinguished in 116 M 283, 291, 149 P 2d 913.

23-3405. Organization of committee—meeting—county convention to elect delegates and alternates to state convention. (1) The committee shall meet prior to the state convention of its political party and organize by electing a chairman and one or more vice-chairmen. The chairman or first vice-chairman shall be a woman. The committee shall elect a secretary and other officers as are proper. It is not necessary for the officers to be precinct committeemen.

(2) The committee may select managing or executive committees and authorize subcommittees to exercise all powers conferred upon the county, city, state, and congressional central committees by the election laws of this state.

(3) The chairman of the county central committee shall call the central committee meeting and not less than 4 days before the date of the central committee meeting shall publish the call in a newspaper published at the county seat and mail a copy of the call to each precinct committeeman. If party rules permit the use of a proxy, no proxy may be recognized unless held by an elector of the precinct of the committeeman executing it.

(4) The county chairman of the party shall preside at the county convention. No person other than a duly elected or appointed committeeman or officer of the committee is entitled to participate in the proceedings of the committee.

(5) If a committeeman is absent, the convention may fill the vacancy by appointing some qualified elector of the party, resident in the precinct, to represent the precinct in the convention.

(6) The county convention shall elect delegates and alternate delegates to the state convention under rules of the state party. The chairman and secretary of the county convention shall issue and sign certificates of election of the delegates.

History: En. Sec. 76, Ch. 363, L. 1969; amd. Sec. 1, Ch. 216, L. 1973; amd. Sec. 26, Ch. 365, L. 1977.

Amendments

The 1973 amendment deleted "enclosing a blank proxy," after "a copy of the call" in the first sentence of subsection (3); inserted "If party rules permit the

use of a proxy," at the beginning of the second sentence of subsection (3); deleted "and the appointed proxy" after "committeeman" in subsection (5); and made a minor change in style.

The 1977 amendment substituted "the election laws of this state" at the end of subsection (2) for "this act"; and made minor changes in phraseology and style.

23-3406. Powers of parties. (1) Each political party shall have power to:

- (a) Make its own rules and regulations;
- (b) Provide for and select its own offices;
- (c) Call conventions and provide for the number and qualification of delegates;
- (d) Adopt platforms;
- (e) Provide for selection of delegates to national conventions;
- (f) Provide for the nomination of presidential electors;
- (g) Provide for the selection of national committeemen and women;
- (h) Make nominations to fill vacancies occurring among its candidates nominated for offices to be filled by the state at large or by any district

consisting of more than one (1) county where such vacancies are caused by death, resignation or removal from the electoral district;

- (i) Perform all other functions inherent in such an organization.

History: En. Sec. 81, Ch. 368, L. 1969.

Compiler's Notes

As enacted, this section contained no subsection (2).

23-3407. Payment of convention expenses—payment of delegates and alternates to conventions to nominate presidential electors. (1) Except as provided in subsection (2) of this section, expenses of county and state conventions shall be paid by the political parties.

(2) Elected delegates and alternates attending state conventions to nominate presidential electors shall be paid eight cents (\$.08) per mile for travel to and from the convention paid from the county general fund.

History: En. Sec. 83, Ch. 368, L. 1969.

CHAPTER 35

ELECTION SUPPLIES AND BALLOTS

Section

- 23-3501. Items to be furnished by commissioners.
- 23-3502. City clerk to act in city elections.
- 23-3503. Registrars or city clerks to deliver ballots and rubber stamp before opening of polls.
- 23-3504. Forms for election returns.
- 23-3505. Completion and posting of forms.
- 23-3506. Registrar to provide printed ballots—other ballots ineffective.
- 23-3507. Ballot for questions submitted to the people—duties of registrar and city clerk.
- 23-3508. Printing and distribution of ballots at public expense—uniformity.
- 23-3509. Printing of candidate's name and party designation on ballot—no party designation for candidates for supreme and district court judgeships—persons nominated by more than one party.
- 23-3510. Pastors to be printed and distributed where vacancy has been filled—election judges to affix.
- 23-3511. Arrangement of names—rotation on ballot.
- 23-3512. Columns and material to be printed on ballot.
- 23-3513. Order of placement.
- 23-3514. Blank space and margin.
- 23-3515. Stub size and contents.
- 23-3516. Number of ballots to be provided for each precinct.
- 23-3517. Short-term and long-term elections for same office—order of offices on ballot.

23-3501. Items to be furnished by commissioners. The commissioners shall:

- (1) Furnish pollbooks to each election precinct in a form prescribed by the secretary of state;
- (2) Furnish printed blanks for precinct registers, pollbooks, tally sheets, lists of electors, tickets, and returns, together with envelopes in which to enclose the returns;
- (3) Furnish for each polling precinct a ballot box or canvas pouch with a lock and key for the ballots and detached stubs.

History: En. Sec. 84, Ch. 368, L. 1969.

Cross-Reference

County commissioners to furnish pollbooks, sec. 16-1156.

23-3502. City clerk to act in city elections. In city elections, the city clerk shall perform all duties prescribed for registrars in this chapter.

History: En. Sec. 85, Ch. 368, L. 1969.

23-3503. Registrars or city clerks to deliver ballots and rubber stamp before opening of polls. Before the opening of the polls, the registrars or city clerks shall:

(1) Deliver the election ballots to the judges of election in each polling place;

(2) Deliver a rubber stamp which contains the words "Official Ballot," the name or number of the election precinct, the name of the county, the date of the election, and the name and official designation of the clerk who furnished the ballots.

History: En. Sec. 86, Ch. 368, L. 1969.

23-3504. Forms for election returns. In sending out election supplies to each precinct, the registrars shall send six (6) or more printed forms with a return envelope to the election judges to be used in sending election returns for public information. The forms shall be in ballot form and have printed on them the names of each candidate and each proposition.

History: En. Sec. 87, Ch. 368, L. 1969.

Transmitting Forms

Forms on which judges of election must summarize the result of the vote are not

a part of the election returns and are not required to be transmitted to the clerk in sealed packages. *Dubie v. Batani*, 97 M 468, 478, 37 P 2d 662.

23-3505. Completion and posting of forms. (1) Immediately after all the ballots are voted in each precinct, the election judges shall copy the total votes cast for each candidate and for and against each proposition on the blanks furnished by the registrars in the preceding section.

(2) The election judges shall immediately post one of the blanks at the polling place, and send a copy by mail to the registrar.

History: En. Sec. 88, Ch. 368, L. 1969.

23-3506. Registrar to provide printed ballots—other ballots ineffective. Except as otherwise provided in the election laws of this state:

(1) the registrar shall provide printed ballots for every election for public officers. He shall print on the ballot the names of all candidates, including candidates for chief justice and justices of the supreme court and judges of the district courts;

(2) ballots other than those printed by the registrars may not be cast or counted in any election.

History: En. Sec. 89, Ch. 368, L. 1969; amd. Sec. 27, Ch. 365, L. 1977.

Amendments

The 1977 amendment substituted "the election laws of this state" at the end of the introductory clause for "this act"; deleted "associate" before "justices of the supreme court" in subsection (1); deleted

former subsection (2) which read: "An elector may write or paste on his ballot the name of any person for whom he desires to vote for any office, but must mark it as provided in section 23-3606. When the ballot is marked in this manner it must be counted the same as though the name is printed upon the ballot and marked by the voter"; designated former

subsection (3) as subsection (2); and made minor changes in punctuation and style.

Separate ballot for bonds and levies, sec. 37-107.

Cross-References

Constitutional amendments, separate ballot prohibited, sec. 37-105.

Initiative and referendum, ballot, sec. 37-107.

Use of Uniform Ballot Required

By statute a uniform ballot has been adopted, to be printed and distributed at public expense, and no others than those so provided can be cast or counted. *Harrington v. Crichton*, 53 M 388, 391, 164 P 537.

23-3507. Ballot for questions submitted to the people—duties of registrar and city clerk. (1) When the secretary of state has certified to the registrar any question to be submitted to a vote of the people, the registrar must print the ballot in a form which will enable the electors to vote upon the question presented as provided by law.

(2) The registrar must prepare the necessary ballots whenever any question is to be submitted to the electors of any locality, or of the state generally. However, for questions submitted to the electors of a city alone, the city clerk shall prepare the necessary ballot.

History: En. Sec. 90, Ch. 368, L. 1969.

23-3508. Printing and distribution of ballots at public expense—uniformity. (1) All ballots cast for public officers within the state, except school district officers, must be printed and distributed at public expense.

(2) The county shall pay for the printing of ballots and cards of instruction for elections in each county.

(3) The expense of printing and delivering ballots in city elections is a charge upon the city in which the election is held.

(4) All official ballots must be uniform in size and printing. This involves:

(a) Uniformity in the type of ink used, which must be black, size of paper, type of white paper and arrangement of the paper, and the names of candidates printed upon the ballots shall be in type of the same size and character;

(b) When the stubs are detached, it must be impossible to distinguish any one of the ballots from another ballot;

(c) The ballots must contain the name of every candidate whose nomination is certified under law for a special office and no other names except that the names of candidates for president and vice-president of the United States shall appear on the ballot as provided in section 23-4301.

History: En. Sec. 91, Ch. 368, L. 1969.

23-3509. Printing of candidate's name and party designation on ballot—no party designation for candidates for supreme and district court judgeships—persons nominated by more than one party. (1) Candidates' names shall be printed in one place on the ballot with the name of the party or political organization, as found in the certificate of nomination in not more than three (3) words, printed opposite the name.

(2) The names of candidates for chief justice, associate justices, and district court judges shall be followed by: "Nominated without party designation."

(3) If a person is nominated for the same office by more than one (1) party, he shall file a written election with the officer with whom he filed his declaration of nomination in the time required to file the declaration. If he fails or neglects to file an election, his name shall appear under the party with whom his nominating declaration was first filed.

History: En. Sec. 92, Ch. 368, L. 1969; amd. Sec. 2, Ch. 254, L. 1971.

Amendments

The 1971 amendment substituted "his

name shall appear under the party with whom his nominating declaration was first filed" for "no party designation shall be placed opposite his name" at the end of the second sentence of subsection (3).

23-3510. Pasters to be printed and distributed where vacancy has been filled—election judges to affix. (1) If a vacancy occurs after the printing of the ballots but before election, and a person is nominated to fill the vacancy, the officer whose duty it is to have the ballots printed must print pasters containing the name of the new nominee and mail them to the election judges by registered letter.

(2) The election judges shall affix the pasters over the substituted name in the proper place on each ballot before it is given to the elector.

History: En. Sec. 93, Ch. 368, L. 1969.

23-3511. Arrangement of names—rotation on ballot. (1) The candidates' names shall be arranged alphabetically on the ballot according to surnames under the appropriate title of the respective offices.

(2) The candidates of the two (2) major parties shall appear on the ballot before and above candidates of minor parties and independent candidates.

(3) The parties whose candidates for governor, except independent candidates, received the highest number of votes at the next preceding four (4) general elections shall constitute the two (2) major political parties.

(4) If there is a tie in the number of first or second place votes, the determination shall be made by going back to enough preceding elections to break the tie and no further.

(5) All other candidates shall be designated as either independent candidates or as belonging to minor parties.

(6) If two (2) or more persons are candidates for election to the same office, the registrar shall divide the ballot forms into sets to provide a substantial rotation of the names of candidates as follows:

(a) He shall divide the whole number of ballot forms for the county into sets equal in number to the greatest number of candidates for any office;

(b) He shall arrange the sets so that the names of the candidates beginning with a form arranged in alphabetical order, are rotated by removing one (1) name from the top of the list for each office and placing the name or number at the bottom of the list for each successive set of ballot forms;

(c) For the purposes of rotation, the office of president and vice-president shall be considered as a group;

(d) No more than one (1) of the sets shall be used in printing the ballot for use in any one (1) precinct, and all ballots furnished for use in any precinct shall be identical;

(e) Candidates of the two (2) major parties shall be rotated so they appear on the ballot before and above any candidates of the minor parties or independent candidates.

History: En. Sec. 94, Ch. 368, L. 1969.

23-3512. Columns and material to be printed on ballot. (1) Each ballot shall contain three categories with at least one column for each category.

(2) At the head of the first column to the left shall be the words "STATE AND NATIONAL" in boldface type, followed by a list of all candidates for state and national offices, including supreme court justices, district court judges, and members of the legislature, and the list shall progressively continue to the top of the second column.

(3) Next shall be the word "COUNTY" in large boldface type and beneath the heading all candidates for county offices. The list shall progressively continue on to the top of the third column.

(4) Next shall be the words "INITIATIVES, REFERENDUMS, AND CONSTITUTIONAL AMENDMENTS" in boldface type, and listed thereunder shall be all proposed constitutional amendments and measures to be voted which do not involve the creation of any state levy, debt, or liability. If there are no such measures, this heading shall be eliminated.

(5) Following each except the last column, the words "VOTE IN THE NEXT COLUMN" shall appear.

(6) All measures involving the creation of a state levy, debt, or liability shall be submitted to the voters upon a separate official ballot.

(7) Each ballot shall be printed so that all the matters printed are equally apportioned among the three categories as nearly as possible.

History: En. Sec. 95, Ch. 368, L. 1969; 'COUNTY AND TOWNSHIP'; deleted amd. Sec. 28, Ch. 365, L. 1977. "and township" before "offices" at the end of the first sentence of subsection (3); and made minor changes in punctuation and style.

Amendments

The 1977 amendment substituted "word 'COUNTY'" in subsection (3) for "words

23-3513. Order of placement. (1) The order of offices on the ballot in the first column designated "STATE AND NATIONAL" shall be as follows:

(a) If the election is in a year in which a president of the United States is to be elected, in spaces separated from the balance of the party tickets by a heavy black line shall be the names and spaces for voting for candidates for president and vice-president. The names of candidates for president and vice-president for each political party shall be grouped together.

(b) United States senator;

(c) United States representative;

(d) Governor and lieutenant governor;

(e) Secretary of state;

- (f) Attorney general;
- (g) State auditor;
- (h) Public service commissioners;
- (i) State superintendent of public instruction;
- (j) Clerk of the supreme court;
- (k) Chief justice of the supreme court;
- (l) Justices of the supreme court;
- (m) District court judges;
- (n) State senators;
- (o) Members of the house of representatives.

(2) If any offices are not to be elected, they shall not be designated but the order of offices to be filled shall maintain their relative positions.

(3) In the column designated "COUNTY", the following order of placement shall be observed:

- (a) clerk of the district court;
- (b) county commissioner;
- (c) county clerk and recorder;
- (d) sheriff;
- (e) county attorney;
- (f) county auditor;
- (g) other offices in the order designated by the registrar.

(4) In the third column constitutional amendments shall be followed by referendum and initiative measures.

History: En. Sec. 96, Ch. 368, L. 1969; amd. Sec. 5, Ch. 28, L. 1973; amd. Sec. 22, Ch. 315, L. 1974; amd. Sec. 29, Ch. 365, L. 1977.

Amendments

The 1973 amendment combined former subdivisions (1)(d) and (1)(e); and redesignated the succeeding items in subdivision (1).

The 1974 amendment substituted "Public service commissioners" for "Railroad

and public service commissioners" in subdivision (1)(a)(i).

The 1977 amendment deleted former subdivision (1)(g) which read: "state treasurer"; redesignated former subdivisions (1)(h) through (1)(n) as subdivisions (1)(g) through (1)(m); divided former subdivision (1)(o) into subdivisions (1)(n) and (1)(o); substituted "Justices" for "Associate justices" in subdivision (1)(l); deleted "AND TOWNSHIP" after "COUNTY" in subsection (3); and made minor changes in style and punctuation.

23-3514. Blank space and margin. (1) Below the names of candidates for each office there must be enough blank spaces to contain as many written names of candidates as there are persons to be elected.

(2) There must be a margin on each side of at least one-half ($\frac{1}{2}$) inch in width, and a reasonable space between the names, so that the voter may clearly indicate the candidate for whom he wishes to cast his ballot.

History: En. Sec. 97, Ch. 368, L. 1969.

23-3515. Stub size and contents. (1) The ballot shall be printed on the same leaf with a stub, separated by perforation.

(2) The stub shall extend the entire width of the ballot and have instructions printed on it.

(3) Upon the face of the stub shall be printed, in type called brevier capitals, the following:

(a) "This ballot should be marked with an 'X' in the square before the name of each person or candidate for whom the elector intends to vote. The elector may write in blank spaces, or paste over another name, the name of a person for whom he wishes to vote and vote by marking an 'X' in the square before the name."

(b) "If a ballot contains a constitutional amendment or other question to be submitted to a vote of the people, it is voted on by marking an 'X' in the square before the amendment or question."

(4) On the front of the stub shall be printed or stamped, by the registrar or other officer, the consecutive number of the ballot, beginning with number 1 and increasing in regular numerical order to the total number of ballots required for the precinct.

History: En. Sec. 98, Ch. 368, L. 1969; amd. Sec. 1, Ch. 414, L. 1975; amd. Sec. 30, Ch. 365, L. 1977.

The 1977 amendment substituted "separated by perforation" at the end of subsection (1) for "and separated by a perforated stub"; and made minor changes in phraseology, punctuation and style.

Amendments

The 1975 amendment substituted "On the front" for "On the back" at the beginning of subsection (4).

23-3516. Number of ballots to be provided for each precinct. (1) The registrar must provide each election precinct with sufficient ballots for the electors registered plus sufficient copies to cover destroyed ballots.

(2) The registrar shall keep a record in his office, showing the exact number of ballots that are delivered to the election judges of each precinct.

(3) In city elections the city clerk shall provide necessary ballots.

History: En. Sec. 99, Ch. 368, L. 1969.

23-3517. Short-term and long-term elections for same office—order of offices on ballot. (1) If there is a short-term and a long-term election for the same office, the long-term office shall precede the short-term.

(2) Above each group of candidates for each office shall be printed the words designating the particular office in boldface capital letters and directly underneath the words, "VOTE FOR," followed by the number to be elected to such office.

(3) The ballot shall be in a form prescribed by the secretary of state.

History: En. Sec. 100, Ch. 368, L. 1969.

CHAPTER 36

CONDUCT OF ELECTIONS—THE POLLS—VOTING AND BALLOTS

- Section
- 23-3601. Instruction cards, printing, distribution, posting and contents of—display of official ballots.
 - 23-3602. Proclamation prior to opening and closing polls.
 - 23-3603. Delivery of official ballots to elector.
 - 23-3604. Sufficient booths to be provided—only one person to occupy booth—may be ejected after occupying booth for unreasonable time.
 - 23-3605. Preventing obstructions.
 - 23-3606. Method of voting.

- 23-3607. No person except election judge to put ballot or other object in a ballot box.
- 23-3608. **Putting ballot in box.**
- 23-3609. Judges may aid disabled elector.
- 23-3610. **Marking precinct register book before elector votes—procedure.**
- 23-3611. **Grounds of challenge.**
- 23-3612. Proceedings pursuant to challenges—oaths.
- 23-3613. Determination of challenges.
- 23-3614. If a person refuses to be sworn, vote to be rejected.
- 23-3615. Trial of challenges.
- 23-3616. Proceedings upon determination of challenges.
- 23-3617. List of challenges to be kept.
- 23-3618. Poll watchers—announcement of voter's name.

23-3601. Instruction cards, printing, distribution, posting and contents of—display of official ballots. (1) The registrar shall print on cards instructions to electors on how to vote.

(2) He shall furnish six (6) cards to the election judges in each precinct and one (1) additional card for each fifty (50) registered electors or fractional part of fifty (50) at the same time ballots are furnished.

(3) The election judges shall post at least one (1) card in each compartment provided for the preparation of ballots, and not less than three (3) of the cards elsewhere about the polling place.

(4) The cards shall contain instructions in bold large type:

- (a) On how to obtain ballots for voting;
- (b) On how to prepare ballots for deposit in the ballot box;
- (c) On how to obtain a new ballot in place of one spoiled by accident;
- (d) A copy of sections 23-4707, 23-4711, 23-4712, 23-4713, 23-4714, and 23-4715, R.C.M. 1947.

(5) Official ballots provided for in chapter 35 of this act shall be posted in each booth or compartment and in three (3) conspicuous places about the polling place.

History: En. Sec. 101, Ch. 368, L. 1969.

Compiler's Notes

Sections 23-4707, 23-4711, 23-4712, 23-4713, 23-4714, and 23-4715, referred to in subdivision (4) (d), were originally num-

bered 94-1407, 94-1411, 94-1412, 94-1413, 94-1414, and 94-1415. For text, see bound Volume Eight under the latter numbers.

The compiler has substituted the reference to "chapter 35" for a reference to "chapter 6" in subsection (5).

23-3602. Proclamation prior to opening and closing polls. Before the polls are opened or closed that fact must be proclaimed at the place of election.

History: En. Sec. 102, Ch. 368, L. 1969.

23-3603. Delivery of official ballots to elector. (1) The election judges must designate two (2) of their number to deliver ballots to electors.

(2) Before delivery, the election judges shall stamp the words "official ballot" on the back and near the top of the ballot. They shall also stamp other words required by section 23-3503.

(3) The election clerks shall enter on the poll lists the name of the elector and the number of the stub attached to the ballot given him.

(4) Each elector shall receive one (1) ballot from the election judges.

History: En. Sec. 103, Ch. 368, L. 1969.

Stamping of Official Ballot

Where ballots had been delivered to electors by the judges of election with the official stamp apparently in the place in which the law requires it to be, al-

though in reality it was on the stub instead of on the ballot proper, the act of the judges in removing the stamp with the stub—thus leaving the ballot without the stamp—did not render the ballot void. *Harrington v. Crichton*, 53 M 388, 164 P 537.

23-3604. Sufficient booths to be provided—only one person to occupy booth—may be ejected after occupying booth for unreasonable time. (1) All officers who designate polling places shall:

(a) Provide in each polling place a sufficient number of booths. The officers must furnish each booth with a door or curtain to screen the voter from observation;

(b) Furnish the booths adequately to enable the elector to prepare his ballot;

(c) Furnish at least one (1) booth for every fifty (50) electors registered in the precinct.

(2) No more than one (1) person may occupy a booth at one (1) time, and no person may occupy a booth longer than is reasonably necessary to prepare his ballot, after which the election judges may eject him.

History: En. Sec. 104, Ch. 368, L. 1969.

23-3605. Preventing obstructions. An election officer, sheriff, constable, or other peace officer may clear the passageway, prevent any obstruction, and arrest any person obstructing the passageway to a polling place.

History: En. Sec. 105, Ch. 368, L. 1969; amd. Sec. 41, Ch. 334, L. 1977.

Amendments

The 1977 amendment deleted former subsections (1) through (3) which read: "(1) An election officer shall not do any electioneering on election day. (2) A person shall not do any electioneering on election day, within any polling place, in any building in which an election is being held, or within two hundred (200) feet of the building where the polling place is located. (3) A person shall not obstruct the entries to a polling place."; retained former subsection (4) as the present section; and deleted former subsections (5) through (11) which read: "(5) A person shall not remove a ballot from the polling place before the closing of the polls. (6)

A person shall not show the contents of his ballot to any other person after it is marked. (7) A person shall not solicit the elector to show the contents of his ballot; nor shall any person, except the election judge, receive from any elector a ballot prepared for voting. (8) An elector shall not receive a ballot from any other person than one of the election judges, nor shall any person other than an election judge deliver a ballot to an elector. (9) An elector shall not vote any ballot except one received from the election judge. (10) An elector shall not place any mark upon his ballot by which it may be identified as the one voted by him. (11) An elector who does not vote a ballot delivered to him shall, before leaving the polling place, return the ballot to the election judge."

23-3606. Method of voting. (1) On receipt of his ballot, the elector must immediately retire to one of the booths and prepare his ballot.

(2) He shall prepare his ballot by marking an "x" in the square before the name of the person or persons for whom he intends to vote.

(3) If the ballot contains a constitutional amendment or other question to be submitted to the vote of the people, he shall mark an "x" in the applicable square indicating his vote either for or against the amendment or question.

(4) The elector may write in the blank spaces, or paste over any other name, the name of any person for whom he wishes to vote and may vote for that person by marking an "x" before the name. When the ballot is marked in this manner, it must be counted the same as though the name is printed upon the ballot and marked by the voter.

(5) After preparing his ballot the elector must fold it so the face of the ballot will be concealed and the endorsements may be seen and hand it to the election judges who shall announce the name of the elector and the printed or stamped number on the stub in a loud tone of voice. The judge must announce the voter's name and record the name in the pollbook. If the voting is in a city, the voter's residence shall also be announced and recorded in the pollbook.

(6) If the elector is entitled to vote and if the printed or stamped number is the same as that entered on the pollbooks as the number on the stub, the judge shall receive the ballot and remove the stub in sight of the elector, depositing each ballot in the ballot box and each stub in a box for detached ballot stubs.

(7) Any elector who spoils his ballot may, on returning the spoiled ballot, receive another in place of it.

History: En. Sec. 106, Ch. 368, L. 1969; amd. Sec. 31, Ch. 365, L. 1977.

Amendments

The 1977 amendment added the last sentence to subsection (4); and made minor changes in phraseology, punctuation and style.

Deposit of Ballot

Act of voting is not completed until the ballot is deposited in the ballot box. *Goodell v. Judith Basin County*, 70 M 222, 233, 224 P 1110.

Error by Election Officer

A ballot properly marked, but from which the stub has not been detached by the ballot judge, should be counted; a voter is not to be disfranchised by the errors or wrongful acts of election officers. *Carwile v. Jones*, 38 M 590, 599, 101 P 153.

Marking of Ballot

In an election contest, the court properly refused to count for a candidate ballots marked as follows: (1) Where the cross was placed after the candidate's name and entirely without his party column; (2) where perpendicular lines were drawn through the names in one party column, but no cross was placed before the candidate's name; and (3) where his name was written in one party column, but no cross marked in the square before the name. In neither instance was there substantial, nor any, compliance with the provisions of predecessor section. *Carwile v. Jones*, 38 M 590, 595, 101 P 153.

In an election contest, the court properly refused to count a ballot for a candidate which was marked by crossing out all the names in other party columns, but which failed to show an "X" before his name. While the intention of the voter is generally a very material consideration, he must express his intention substantially as indicated by the statute. *Carwile v. Jones*, 38 M 590, 595, 101 P 153.

Where the crossmark was placed after the candidate's name but within his party column, the ballot was void, since the elector did not substantially comply with the requirement of prior section relative to placing the mark before the name. *Carwile v. Jones*, 38 M 590, 595, 101 P 153.

Any mark within the square before the candidate's name, which can be said to be a crossing of two lines, will answer the requirements of the statute that the elector must place an "X" in such square; and in the absence of anything to indicate a purpose on his part to identify his ballot by the use of a third line within the square, a defect in the mark is not sufficient to vitiate the ballot. *Carwile v. Jones*, 38 M 590, 595, 101 P 153, explained in 109 M 390, 393, 396, 96 P 2d 922, distinguished in — M —, 539 P 2d 1182.

Statutory provision that a ballot should be marked by an "X" in the square is directory and not mandatory, and in the absence of a further provision that unless so marked the ballot shall not be counted, a ballot upon which the elector marked all squares with a check mark (✓) instead of an "X" should have been counted for contestant, there being nothing to indicate

an attempt to mark the ballot for identification purposes. *Peterson v. Billings*, 109 M 390, 395, 96 P 2d 922.

Voting an Affirmative Act

The casting of a ballot at an election of public officers is an affirmative, not a negative, act—an act done with intention of voting for someone; hence if it is the purpose of voters to defeat a certain candidate, that purpose can be accomplished only by voting for some person in opposition to him, and not by voting for a person who died some weeks before election with the expectation that the vote cast for him would be counted as opposed to the person sought to be defeated; one who has died is no longer a person for whom, under section 2, article IX of the constitution, a voter may cast his ballot.

23-3607. No person except election judge to put ballot or other object in a ballot box. No person except an election judge may put a ballot, any paper resembling a ballot, or anything other than a ballot in a ballot box.

History: En. Sec. 107, Ch. 368, L. 1969; amd. Sec. 42, Ch. 334, L. 1977.

Amendments

The 1977 amendment substituted "may" for "shall"; and deleted the former last

State ex rel. *Wolff v. Geurkink*, 111 M 417, 426, 109 P 2d 1094, 133 ALR 304.

Write-in Votes

Ballots containing the name of a candidate written in by hand but having no x in front of the name or in front of the name of any other candidate did not conform to the requirements of this section. State ex rel. *Browne v. District Court*, — M —, 539 P 2d 1182.

Stickers pasted onto the regular ballot, bearing the name of the write-in candidate and having a small printed x in the box inside the name were not valid votes because the voters had failed to mark the ballots as required by law. State ex rel. *Browne v. District Court*, — M —, 539 P 2d 1182.

two sentences reading "A person violating this section is guilty of a misdemeanor. An election judge who knowingly permits a violation of this act is guilty of a felony."

23-3608. Putting ballot in box. If the name of an elector appears in the official register of the precinct, or if the person offering to vote produces a proper registry certificate and his vote is not rejected upon a challenge, the election judge must immediately and publicly in the presence of all the judges, place the ballot in the ballot box without opening or examining it.

History: En. Sec. 108, Ch. 368, L. 1969.

23-3609. Judges may aid disabled elector. (1) The election judges shall aid an elector, who because of physical disability or inability to read or write, needs assistance in marking his ballot.

(2) The elector shall be assisted by two (2) judges who represent different parties. The disabled elector may request that a qualified elector he designates also aid him in voting. The election judges must certify on the official register opposite the disabled elector's name that the ballot was marked with their assistance and the name of any other elector designated. Neither the judges nor a person who aided the elector may reveal information regarding the ballot.

(3) The election judges shall require the declaration of disability by the elector under oath. They are authorized to administer the oath.

(4) No elector, other than the one who is unable to vote, may divulge to anyone within the polling place the name of any candidate for whom he intends to vote, or ask or receive the assistance of any person within the polling place in the preparation of his ballot.

(5) Instead of assistance, as provided in subsection (2) of this section, the elector may request the assistance of any qualified elector whom he designates to the judges to aid him in the marking of his ballot, and the judges must certify on the official register opposite the name of such disabled elector that it was so marked with their assistance.

History: En. Sec. 109, Ch. 368, L. 1969.

Evidence

Where it appeared in an election contest that a voter's ballot had been endorsed by the judges of election, as required by law, it was necessary to show that it could not thereby be identified, in order to let in, as secondary evidence, testimony as to how he voted. *Lane v. Bailey*, 29 M 548, 560, 75 P 191.

Need Not Certify Reason for Assistance

A ballot bearing the endorsement:

"Voted by H. and M. (judges election) for illegibility of voter," was not void on the ground that the reason given for assisting the voter was not one recognized by law, since section does not require the judges to certify the reason for assisting an elector, and the words "for illegibility of voter" were therefore surplusage; and in the absence of a showing why they gave assistance, it will be presumed that they regularly performed their official duties. *Carwile v. Jones*, 38 M 590, 599, 101 P 153.

23-3610. Marking precinct register book before elector votes—procedure. (1) The election judges at every primary, general, or special election shall, in the precinct register book, mark a cross (X) upon the line opposite to the name of the elector.

(2) Before an elector is permitted to vote, the election judges shall require the elector to sign his name on the place designated in the precinct register.

(3) The election judges shall require an elector not able to sign his name to produce two electors who shall make an affidavit before one or more of the election judges in a form prescribed by the secretary of state.

(4) The affidavit shall be filed by the election judges and returned to the registrar with the returns of the election. One of the judges shall write the elector's name, noting the fact of his inability to sign, and the names of the two electors.

(5) If the elector fails or refuses to sign his name and if unable to write fails to procure two electors who will take the oath required, he may not vote.

(6) Each precinct shall keep a list of persons voting, and the name of each person who votes shall be entered in it and numbered in the order voting. This list is known as the pollbook.

History: En. Sec. 110, Ch. 368, L. 1969; amd. Sec. 3, Ch. 254, L. 1971; amd. Sec. 32, Ch. 365, L. 1977.

Amendments

The 1971 amendment inserted "primary" in subsection (1).

The 1977 amendment deleted subsection (6) which read: "Immediately after the

canvass of the returns, the election judges shall deliver to the registrar the official register, sealed, with the election returns and pollbook which have been used for the election"; redesignated former subsection (7) as subsection (6); and made minor changes in phraseology, punctuation and style.

23-3611. Grounds of challenge. A person offering to vote may be orally challenged by any elector of the county, upon the following grounds:

(1) that he is not the person whose name appears on the register or checklist;

- (2) that he is of unsound mind, as determined by a court;
- (3) that he has voted before in that election;
- (4) that he has been convicted of a felony and is serving a sentence in a penal institution.

History: En. Sec. 111, Ch. 368, L. 1969; amd. Sec. 33, Ch. 365, L. 1977.

Amendments

The 1977 amendment substituted subdivision (2) for "That he has been adjudicated insane or is confined to a state institution"; substituted "in that election" at the end of subdivision (3) for "that

day"; and substituted "is serving a sentence in a penal institution" at the end of subdivision (4) for "has not been pardoned"; and made minor changes in style.

Cross-References

Challenges at nominating elections, sec. 23-4746.

23-3612. Proceedings pursuant to challenges—oaths. (1) If the challenge is on the ground that the person is not the person whose name appears on the official register, the election judges shall administer the following oath: "You do swear (or affirm) that you are the person whose name is entered on the official register and precinct list."

(2) If the challenge is on the ground that the person has voted before in that election, the judges shall administer this oath: "You do swear (or affirm) that you have not voted before in this election."

(3) If the challenge is on the ground that the person has been convicted of a felony and is serving a sentence in a penal institution, the judges shall administer the following oath: "You do swear (or affirm) either that you have not been convicted of a felony or that, if you have been convicted of a felony, you are not serving a sentence in a penal institution."

History: En. Sec. 112, Ch. 368, L. 1969; amd. Sec. 34, Ch. 365, L. 1977.

Amendments

The 1977 amendment substituted "in that election" in subsection (2) for "that day"; substituted "voted before in this election" in the oath in subsection (2) for

"before voted this day"; inserted "and is serving a sentence in a penal institution" in subsection (3); inserted "or that, if you have been convicted of a felony, you are not serving a sentence in a penal institution" in the oath in subsection (3); and made minor changes in phraseology.

23-3613. Determination of challenges. (1) Challenges on the grounds that the person is not the person whose name appears on the official register or that the person has before voted that day are determined in favor of the person challenged by his taking the oath tendered.

(2) A challenge that the person has been convicted of a felony and not pardoned must be determined in favor of the challenged on his taking the oath tendered.

History: En. Sec. 113, Ch. 368, L. 1969; amd. Sec. 35, Ch. 365, L. 1977.

Amendments

The 1977 amendment deleted "unless the conviction is proved by producing an authenticated copy of the record, or by oral testimony of two (2) witnesses. (a) If a person convicted of a felony states he was pardoned, he must exhibit his pardon or certified copy to the election

judges. (b) If the pardon is found sufficient, the election judges shall administer this oath: 'You do swear (or affirm) that you have not been convicted of any felony other than that for which a pardon is now exhibited.' (c) After taking the oath, the person must be allowed to vote if otherwise qualified, unless a conviction of some other felony is proved" at the end of subsection (2).

23-3614. If a person refuses to be sworn, vote to be rejected. If a person challenged refuses to take the oath tendered, or refuses to be sworn and to answer the questions touching the matter of residence, he shall not be allowed to vote.

History: En. Sec. 114, Ch. 368, L. 1969.

23-3615. Trial of challenges. Challenges for causes other than those specified in this chapter must be tried and determined by the election judges at the time of the challenge.

History: En. Sec. 115, Ch. 368, L. 1969.

23-3616. Proceedings upon determination of challenges. If the challenge is determined against the person offering to vote, the ballot shall, without examination, be destroyed by the election judges in the presence of the person offering the challenge. If determined in his favor, the ballot must be deposited in the ballot box.

History: En. Sec. 116, Ch. 368, L. 1969.

23-3617. List of challenges to be kept. The election judges shall require each election clerk to keep a list showing:

- (1) The names of all persons challenged;
- (2) The grounds of each challenge;
- (3) The determination of the election judges upon the challenge.

History: En. Sec. 117, Ch. 368, L. 1969.

23-3618. Poll watchers—announcement of voter's name. The election judges shall permit one (1) poll watcher from each political party to station himself close to the poll lists in a location that does not interfere with election procedures. At the time that each elector signs his name, one (1) of the election judges shall pronounce the name loud enough to be heard by the poll watchers. A poll watcher who does not understand the pronunciation has the right to request that the judge repeat the name. Poll watchers shall also be permitted to observe all of the vote-counting procedures of the judges and all entries of the results of the elections.

History: En. Sec. 118, Ch. 368, L. 1969.

CHAPTER 37

ABSENTEE VOTING AND REGISTRATION

Section

- 23-3701. Voting by elector when absent from place of residence or physically incapacitated from going to polls.
- 23-3702. Forms and rules for absentee voting in school district elections.
- 23-3703. Application of absentee or physically incapacitated person for ballot.
- 23-3704. Form of application—manner.
- 23-3705. Transmission of application to registrar—delivery of ballot.
- 23-3706. Mailing ballot to elector—affirmation—electors in the United States service.
- 23-3707. Marking and affirming to ballot by elector.
- 23-3708. Disposition of marked ballot upon receipt by registrar or clerk.
- 23-3709. Delivery of ballots to election judges—ballots to be rejected—ballots not to count.
- 23-3710. Registrar or clerk to keep record of ballots and issue certificate.

- 23-3711. Duty of election judges—pollbooks and numbering ballots.
 23-3712. Voting before election day by prospective absentee or physically incapacitated elector.
 23-3713. Envelopes containing ballots—deposit in box and rejection of ballot.
 23-3714. Elector whose absentee ballot has been rejected as defective may vote in person.
 23-3715. Opening of envelopes after deposit.
 23-3716. Voting machines—canvass of votes.
 23-3718. “Elector in the United States service” defined.
 23-3719. Registration of absent electors in United States service.
 23-3720. Oath for elector in United States service.
 23-3721. Classification of federal post card application.
 23-3724. Registration of electors whose United States service or employment has terminated.

23-3701. Voting by elector when absent from place of residence or physically incapacitated from going to polls. A qualified registered elector who will be absent from the county or physically incapacitated and unable to go to the polls on the day of election may vote as provided in sections 23-3701 through 23-3723.

History: En. Sec. 119, Ch. 368, L. 1969.

Compiler's Notes

Sections 23-3722 and 23-3723, referred to in the text, were repealed by Sec. 2, Ch. 396, Laws of 1975.

DECISIONS UNDER FORMER LAW

Constitutionality

Prior Absent Voters Law was valid enactment and did not violate section 2, article IX of the state constitution, which provides that an elector “shall have re-

sided in the state one year immediately preceding this election at which he offers to vote.” *Goodell v. Judith Basin County*, 70 M 222, 227, 224 P 1110.

23-3702. Forms and rules for absentee voting in school district elections. The state superintendent of public instruction shall prepare the form of application for absentee ballots and other forms necessary for school district elections and may make necessary rules to carry out the purpose of this chapter as it pertains to school districts.

History: En. Sec. 120, Ch. 368, L. 1969.

23-3703. Application of absentee or physically incapacitated person for ballot. During a period beginning seventy-five (75) days before the day of election and ending at 12 noon on the day before the election, an elector expecting to be absent from the county in which his voting precinct is situated, an elector in United States service, or an elector who will be unable to go to the polls because of physical incapacity may apply to the registrar or city clerk for an absentee ballot.

History: En. Sec. 121, Ch. 368, L. 1969;
 amd. Sec. 1, Ch. 145, L. 1975.

Amendments

The 1975 amendment increased the time period from 45 days to 75 days; and made a minor change in phraseology.

23-3704. Form of application—manner. (1) Application for absentee ballots shall be made on a form furnished by the registrar of the county of which the applicant is an elector, the city clerk, or clerk of a first class school district. The form shall be prescribed by the secretary of state except as provided in section 23-3702.

(2) The applicant shall subscribe the application affirming that the information contained in the application is true and complete to the best of his knowledge. The application is not complete without this affirmation.

(3) Application for an absentee ballot may be made by any elector in the United States service by the federal post card application or by any written request signed by the applicant, addressed to the registrar of the applicant's residence.

History: En. Sec. 122, Ch. 368, L. 1969; amd. Sec. 1, Ch. 287, L. 1975.

best of his knowledge" for "and swear to it before an officer authorized to administer oaths" in the first sentence of subsection (2); and substituted "affirmation" for "affidavit" in the second sentence of subsection (2).

Amendments

The 1975 amendment substituted "affirming that the information contained in the application is true and complete to the

23-3705. Transmission of application to registrar—delivery of ballot.

(1) The elector shall forward the application by mail or deliver it in person to the registrar.

(2) The registrar shall compare the signature on the application with the applicant's signature on the registration card. If convinced the person making the application is the same as the one whose name appears on the registration card, he shall deliver the ballot.

History: En. Sec. 123, Ch. 368, L. 1969.

23-3706. Mailing ballot to elector—affirmation—electors in the United States service. (1) Either upon receipt of the application or immediately after the official ballot for the precinct of the applicant's residence has been printed, the registrar, city clerk, or clerk of a first class school district shall send by mail, postage prepaid, whatever official ballots are necessary.

(2) The proper officer shall enclose an envelope with the ballots which has written on the front the name, title, and post-office address of the officer sending it, and upon the other side a printed affirmation in a form prescribed by the secretary of state.

(3) Both the envelope in which the ballot is mailed to an elector in the United States service and the return envelope shall have printed across the face two parallel horizontal red bars, each one-quarter ($\frac{1}{4}$) inch wide, extending from one side of the envelope to the other, with an intervening space of one-quarter ($\frac{1}{4}$) inch, with the words "Official Election Ballot Material—via Air Mail," between the bars. In the upper right-hand corner shall be printed "Free of U.S. Postage." In the upper left-hand corner shall be blanks sufficient for the recipient to place his return address. All printing on the face of the envelope shall be in red. The gummed flap of the envelope supplied for the return of the ballot shall be separated by wax paper or other appropriate protective insert. Voting instructions provided in subparagraph (5) of this section shall include a procedure to be followed by absentee voters, such as notation of the facts on the back of the envelope duly signed by the voter, in instances of adhesion of the balloting material.

(4) The return address shall be self-addressed to the registrar or city clerk.

(5) Instructions for voting shall be enclosed with the ballots for electors in the United States service. Instructions shall include information concerning the type or types of writing instruments which may be used to mark the absentee ballot.

History: En. Sec. 124, Ch. 368, L. 1969; amd. Sec. 1, Ch. 246, L. 1971; amd. Sec. 2, Ch. 287, L. 1975.

Amendments

The 1971 amendment added the fifth and sixth sentences to subsection (3); and added the second sentence to subsection (5).

The 1975 amendment substituted "affirmation" for "affidavit" in subsection (2); and deleted "and witnessing officer"

after "signed by the voter" near the end of subsection (3).

Improper Delivery

Absent voter's ballot delivered by county clerk not to electors personally or by mail, but to one engaged in procuring electors to apply therefor and request that such ballots be delivered to such person, were void and could not be voted at ensuing election. *State ex rel. Van Horn v. Lyon*, 119 M 212, 173 P 2d 891, 895.

23-3707. Marking and affirming to ballot by elector. (1) The elector shall complete the affirmation at the time he executes his vote.

(2) The elector shall mark each ballot in a manner so no other person can see the vote.

(3) The elector shall fold the ballot to conceal the vote and shall place it in the envelope and seal it.

(4) The elector shall sign at the end of the certificate and affirmation.

(5) The elector shall mail the envelope, postage prepaid, or deliver it to the registrar, city clerk, or clerk of a first class school district.

History: En. Sec. 125, Ch. 368, L. 1969; amd. Sec. 3, Ch. 287, L. 1975.

Amendments

The 1975 amendment substituted "affirmation at the time he executes his vote" for "affidavit before an officer authorized by law at the place of execution to administer oaths" in subsection (1); deleted "in the presence of the officer only" after "mark each ballot" in subsection (2); substituted "no other person can see the vote"

for "the officer cannot see the vote" at the end of subsection (2); deleted "in the presence of the officer" after "conceal the vote" in subsection (3); deleted "in the officer's presence" before "place it in the envelope" in subsection (3); substituted "elector shall sign" for "officer shall sign" in subsection (4); substituted "affirmation" for "affidavit" at the end of subsection (4); and made minor changes in phraseology.

23-3708. Disposition of marked ballot upon receipt by registrar or clerk.

(1) Upon receipt of the envelope, the registrar, city clerk, or clerk of a first class school district shall immediately enclose it in a larger envelope, together with the elector's application, and seal the larger envelope.

(2) The registrar, city clerk, or clerk of a first class school district shall safely keep it in his office until delivered or mailed by him.

History: En. Sec. 126, Ch. 368, L. 1969; amd. Sec. 36, Ch. 365, L. 1977.

larger envelope" at the end of subsection (1) for "it"; and made a minor change in punctuation.

Amendments

The 1977 amendment substituted "the

23-3709. Delivery of ballots to election judges—ballots to be rejected—ballots not to count. (1) If the absentee ballot is received prior to delivery of the official ballots to the election judges, the registrar or clerk shall deliver the larger envelope to the judges at the same time the ballots are delivered.

(2) If absentee ballots are received after the ballots are delivered to the election judges, but prior to the close of the polls, the registrar or clerk shall immediately deliver the larger envelopes to the judges.

(3) If absentee ballots are received by the registrar or clerk for which application was not received prior to twelve (12) noon on the day preceding an election, or received after the close of the polls, the clerk shall endorse upon the voter's envelope the date and exact time of receipt and the words "To be rejected." Absentee ballots so endorsed shall be delivered to the election judges of the precinct or retained by the registrar or clerk if the judges have adjourned and shall be rejected.

(4) If an elector votes absentee ballot and dies between the time of balloting and election day, his ballot will not count.

History: En. Sec. 127, Ch. 368, L. 1969; amd. Sec. 4, Ch. 254, L. 1971.

Amendments

The 1971 amendment inserted "but prior to the close of the polls" in subsection (2); deleted "by mail postage prepaid" after "larger envelopes" in subsection (2); in-

serted "or received after the close of the polls" in the first sentence of subsection (3); inserted "or retained by the registrar or clerk if the judges have adjourned" in the second sentence of subsection (3); and made minor changes in phraseology and style.

23-3710. Registrar or clerk to keep record of ballots and issue certificate. (1) The absentee ballots delivered shall be regular official ballots beginning with ballot number one (1) and following consecutively, according to the number of applications for absentee ballots.

(2) The registrar, city clerk, or school district clerk shall keep a record of all absentee ballots delivered, as well as of ballots marked before him.

(3) The registrar, city clerk, or school district clerk shall deliver to the election judges to whom the ballots are delivered a certificate stating the number of absentee ballots delivered as well as those marked before him, and the names of the voters to whom such ballots are delivered, or by whom they have been marked if marked before him.

History: En. Sec. 128, Ch. 368, L. 1969.

23-3711. Duty of election judges—pollbooks and numbering ballots. (1) The election judges, at the opening of the polls, shall note on the pollbooks opposite the numbers corresponding to the number of absentee ballots issued the fact that the ballots were issued and reserve the numbers for the absent or physically incapacitated voters. The notation may be made by writing the words "absent or physically incapacitated voters" opposite the numbers.

(2) The election judges shall insert only the name of the elector entitled to each particular number according to the certificate of the registrar or city clerk and the number of his ballot.

History: En. Sec. 129, Ch. 368, L. 1969; amd. Sec. 37, Ch. 365, L. 1977.

Amendments

The 1977 amendment deleted subsection (3) which read "Any absentee ballots which have been rejected shall be placed

with the voter's application and the absent or physically incapacitated voter's envelope furnished by the registrar or city clerk. (a) This envelope shall be sealed and endorsed by the words, 'rejected absentee ballots,' numbered . . . , and shall put on it the number of the absentee bal-

lots given according to the registrar's or city clerk's certificates. (b) There shall be a separate enclosing envelope for the absentee ballots rejected, and the envelopes

shall be placed in an envelope together with other ballots, and shall not be opened without a court order"; and made a minor change in phraseology.

23-3712. Voting before election day by prospective absentee or physically incapacitated elector. (1) An elector who is present in his county after the official ballots of his county or school district have been printed who has reason to believe that he will be absent from the county or school district or physically incapacitated on election day, may vote before election day before the registrar, city clerk or school district clerk.

(2) The provisions of this chapter apply to such voting.

(3) If the ballot is marked before the registrar, city clerk or school district clerk, he shall deal with it in the same manner as if it had come by mail.

History: En. Sec. 130, Ch. 368, L. 1969; amd. Sec. 4, Ch. 287, L. 1975.

end of subsection (1) "or some officer authorized to administer oaths and having the official seal"; and made a minor change in punctuation.

Amendments

The 1975 amendment deleted from the

23-3713. Envelopes containing ballots—deposit in box and rejection of ballot. (1) While the polls are open on election day, the election judges shall first open the outer envelope only and compare the signature of the voter on the application and on the affirmation.

(2) If the election judges find that the signatures correspond, that the affirmation is sufficient, and that the absentee elector is qualified and has not yet voted, they shall open the absentee voter's envelope and take out the ballot or ballots and, without unfolding them or permitting them to be examined, ascertain whether the stubs are still attached and whether the numbers correspond to the numbers in the certificate of the registrar or city clerk.

(3) If so, they shall endorse the ballots the same way that other ballots are endorsed, detach the stubs, deposit the ballots in the proper ballot boxes, and make entries in their election records to show the elector has voted.

(4) If the affirmation is found defective, the numbers do not correspond, or the voter is unqualified, the election judges, without opening the absentee ballot, shall mark across the face of it "rejected as defective" or "rejected as not an elector".

(5) The absentee ballot envelope, when it has been voted, shall be deposited in the ballot box containing the general or party ballots and shall be retained and preserved in the manner provided for official ballots.

(6) If, upon opening the absentee ballot envelope, it is found that the stub of any ballot has been detached or that the number does not correspond to the number on the certificate of the registrar or clerk, the ballot shall be rejected. It shall be marked on back as "rejected for", filling the blank with the reason. This statement shall be dated and signed by a majority of the election judges.

(7) The rejected ballots, together with the absentee ballot envelope bearing the application, shall be enclosed in an envelope, sealed, and the

judges shall write on the envelope, "rejected ballot of absentee voter" (writing in the elector's name). "The rejected ballot(s) is (are)"

(8) The election judges shall designate the rejected ballot as "general ballot", if it is a ballot for candidates.

(9) If the rejected ballot is on a question submitted to the vote of the electors, the judges shall designate it as ballot question No. . . . on the envelope.

(10) A separate enclosing envelope shall be used for each absentee ballot rejected. This envelope shall be placed in the envelope in which the other ballots voted are required to be placed and shall not be opened without a court order.

(11) The registrar or clerk shall provide and deliver to the election judges suitable envelopes for enclosing rejected absentee ballots.

History: En. Sec. 131, Ch. 368, L. 1969; amd. Sec. 5, Ch. 287, L. 1975; amd. Sec. 38, Ch. 365, L. 1977.

before "on the envelope" at the end of subsection (9); and made minor changes in phraseology and punctuation.

Amendments

The 1975 amendment substituted references to "the affirmation" for references to "the affidavit" in subsections (1), (2) and (4).

The 1977 amendment deleted "or rejected" after "voted" in subsection (5); deleted "that are rejected" at the end of subsection (8); deleted "in the certificate"

Voting Accomplished

Voting is accomplished not merely by marking the ballot, but by having it delivered to the election officials and deposited in the ballot box before the closing of the polls on election day, and this is equally true for absent voters. *Maddox v. Board of State Canvassers*, 116 M 217, 223, 149 P 2d 112.

23-3714. Elector whose absentee ballot has been rejected as defective may vote in person. If the envelope containing the absentee ballot has been marked "rejected as defective" and deposited in the ballot box, the elector appearing has the same right to vote as if he had not attempted to vote as an absent or physically incapacitated voter. If voting machines are used, he shall vote by machine as other voters.

History: En. Sec. 132, Ch. 368, L. 1969.

23-3715. Opening of envelopes after deposit. If an envelope containing an absentee ballot has been deposited unopened in the ballot box and the envelope has not been marked rejected, the envelope shall be opened without a court order and the ballot cast.

History: En. Sec. 133, Ch. 368, L. 1969; amd. Sec. 39, Ch. 365, L. 1977.

Amendments

The 1977 amendment inserted "and the envelope has not been marked rejected."

23-3716. Voting machines—canvass of votes. (1) In precincts where voting machines are used, the registrar, city clerk, or clerk of a school district shall print and provide ballots in official form for possible absent or physically incapacitated voters, and also pollbooks and ballot boxes required for precincts in which printed ballots are used.

(2) Absentee ballots received in those precincts shall be handled as provided in this chapter.

(3) In making the official canvass, the votes cast by absentee ballot shall be added to the votes cast on the voting machines.

History: En. Sec. 134, Ch. 368, L. 1969.

23-3717. Repealed.**Repeal**

Section 23-3717 (Sec. 135, Ch. 368, L. 1969; Sec. 6, Ch. 287, L. 1975), relating to

false affirmations and official misconduct, was repealed by Sec. 49, Ch. 334, Laws 1977.

23-3718. "Elector in the United States service" defined. "Elector in the United States service" means:

(1) A member of the armed forces in the active service, and his spouse and dependents;

(2) A member of the merchant marine of the United States and his spouse and dependents;

(3) A member of a religious group or welfare agency assisting members of the armed forces of the United States who are officially attached to and serving the armed forces, and his spouse and dependents;

(4) A citizen of the United States temporarily residing outside the territorial limits of the United States and the District of Columbia and his spouse and dependents when residing with or accompanying him.

History: En. Sec. 136, Ch. 368, L. 1969; amd. Sec. 1, Ch. 249, L. 1971.

reading "A civilian employee of the United States in all categories serving outside the territorial limits of the several states of the United States or in the District of Columbia and his spouse and dependents when residing or accompanying him."

Amendments

The 1971 amendment inserted subdivision (2); and revised and redesignated as subdivision (4) former subdivision (2)

23-3719. Registration of absent electors in United States service. (1) An elector in United States service who is absent from the state is entitled to register by mailing to the registrar a federal post card application filled out and signed under oath.

(2) The form of the federal post card application, which may be used both as an application for registration and for a ballot, shall be prescribed by the secretary of state.

History: En. Sec. 137, Ch. 368, L. 1969.

23-3720. Oath for elector in United States service. (1) Any oath required for electors in the United States service to register, request a ballot, or vote, may be administered and attested, within or without the United States, by any commissioned officer in active service, any member of the merchant marine of the United States designated for this purpose by the secretary of commerce, the head of any department or agency of the United States, any civilian official empowered by state or federal law to administer oaths, or any civilian employee designated by the head of any department or agency of the United States.

(2) No official seal is required to be affixed to the oath and neither the elector nor the certifying officer need disclose his whereabouts at the time of taking the oath except to the extent required by the federal post card application.

History: En. Sec. 138, Ch. 368, L. 1969; amd. Sec. 1, Ch. 248, L. 1971.

Amendments

The 1971 amendment inserted "any member of the merchant marine * * * or

agency of the United States" in the middle of subsection (1); added "or any civilian employee designated by the head of any department or agency of the United States" at the end of subsection (1); and made a minor change in phraseology.

23-3721. Classification of federal post card application. (1) Upon receipt by the registrar of a federal post card application properly filled out and signed under oath, the registrar shall classify the application according to the precinct in which the elector resides and arrange the cards in each precinct in alphabetical order.

(2) The registrar shall, upon receipt of any federal post card application, immediately enter upon the official register of the county in the proper precinct the full information given by the elector.

(3) Immediately upon entry in the official registry of the name of the elector the registrar shall send to him by the fastest mail service available a notice that he has been registered and informing him that in order to secure a ballot he must mail at any time within forty-five (45) days preceding the election another federal post card application to his registrar or city clerk.

(4) A federal post card application received from an elector in the United States service within forty-five (45) days preceding an election shall be treated as a simultaneous application for registration and for ballot. Where the elector is already registered the federal post card application shall be treated as an application for a ballot.

History: En. Sec. 139, Ch. 368, L. 1969; amd. Sec. 1, Ch. 250, L. 1971.

in the official registry of the name of the elector send to him by the fastest mail service available a notice that he has been registered and informing him that in order to secure a ballot he must mail at any time within forty-five (45) days preceding the election another federal post card application to his registrar or city clerk"; and added subsection (4).

Amendments

The 1971 amendment rewrote subsection (3) which formerly read, "If an elector in the United States service has not already requested an absentee ballot, the registrar shall, immediately upon entry

23-3722, 23-3723. Repealed.

Repeal

Sections 23-3722 and 23-3723 (Secs. 140, 141, Ch. 368, L. 1969), relating to registra-

tion of voters absent from the county, were repealed by Sec. 2, Ch. 396, Laws 1975. For present law, see sec. 23-3006.

23-3724. Registration of electors whose United States service or employment has terminated. Electors in the United States service who have been honorably discharged from the armed forces of the United States or who have terminated their service or employment outside the territorial limits of the United States too late to register at the time when, and place where, registration is required, shall be entitled to register for the purpose of voting at the next ensuing election after such discharge or termination of employment up to 12 noon on the day before the election, provided that said elector shall execute a sworn affidavit qualifying him under this section, to be filed in the office of his registration. County registrar shall provide to the person registering under the provisions of this section, a certificate stating the precinct in which he is entitled to vote which shall be presented to the election judges of that precinct at the time of voting.

History: En. 23-3724 by Sec. 1, Ch. 247, L. 1971.

lating to absentee voting and registration, providing for the registration of electors whose United States services or employment has terminated too late to register in person to vote in the next ensuing election.

Title of Act

An act to amend Title 23, Chapter 37, R.C.M. 1947, by adding a new section re-

CHAPTER 38

VOTING MACHINES

Section

- 23-3801. Voting machines—secretary of state.
- 23-3802. Specifications of machines required.
- 23-3803. Providing voting machines—payment.
- 23-3804. Preparation of machines for use.
- 23-3805. Write-in ballots.
- 23-3806. Placement of machines—time voter to remain in booth—election board make-up.
- 23-3807. Registrar to instruct election judges.
- 23-3808. Publication of information concerning machines.
- 23-3809. Voting machine to be exhibited.
- 23-3810. Furnishing samples and supplies.
- 23-3811. Registry lists—provision for number of each ballot.
- 23-3812. Assistance to illiterate, blind, or physically disabled voters.
- 23-3813. Counting the votes.
- 23-3814. Procedure after count is ascertained.
- 23-3815. Disposition of write-in ballots and tally sheets.
- 23-3816. Return sheets—contents.
- 23-3817. Experimental use of machines.
- 23-3818. Machine breakdowns—electors may vote by paper ballot upon request.
- 23-3819. Use of separate paper ballots for voting on certain money issues where machines do not allow proper lockout.
- 23-3822. General election laws to apply.

23-3801. Voting machines—secretary of state. (1) Before any voting machine can be used, the secretary of state shall:

(a) examine the machine to determine if it complies with the requirements of 23-3801 through 23-3819 and 23-3822;

(b) within 30 days after examining a machine, file a report in his office on each machine examined;

(c) within 5 days after filing the report, transmit to the commissioners, city council, or other board having control of elections in each county or city a list of the machines approved.

(2) A machine shall not be used unless approved by the secretary of state 60 days or more prior to the election.

(3) The secretary of state may employ and compensate qualified mechanics who are electors to assist him in duties required by this chapter.

(4) The person or company submitting a machine for examination before the filing of the report shall pay the compensation and expenses of mechanics connected with the examination to the secretary of state for deposit in the state general fund.

History: En. Sec. 142, Ch. 368, L. 1969; amd. Sec. 40, Ch. 365, L. 1977.

Amendments

The 1977 amendment substituted “23-

3801 through 23-3819 and 23-3822” in subdivision (1)(a) for “23-3801 through 23-3822”; and made minor changes in phraseology, punctuation and style.

DECISIONS UNDER FORMER LAW

Constitutionality

Prior voting machine law was not invalid as in contravention of section 1, article IX of the constitution of Montana which provided that all elections shall be “by ballot”; the term “ballot” be-

ing employed not to designate a piece of paper, but a method to ensure, so far as possible, the secrecy and integrity of the popular vote. State ex rel. Fenner v. Keating, 53 M 371, 377, 163 P 1156.

23-3802. Specifications of machines required. (1) A machine or machine system may not be approved unless:

- (a) An elector can vote in secrecy as he is entitled to vote by law;
- (b) An elector is prevented from voting for any candidate or upon any question more than once and is also prevented from voting for any person or on any proposition, if he is not entitled to vote;
- (c) An elector can vote a split ticket if he desires;
- (d) Every vote cast is registered and recorded.

(2) The candidates for president and vice-president shall appear on the machine ballot. Presidential electors shall not appear on the machine.

(3) The machine or machine system must be constructed so that it cannot be tampered with for a fraudulent purpose and must also be constructed so that during the progress of the voting no person can see or know the number of votes registered for any candidate or on any proposition.

History: En. Sec. 143, Ch. 368, L. 1969.

Tampering with Machine

Act does not require a voting machine which will be proof against all tampering or manipulation, but one which, when honestly operated, will enable an elector to secretly cast his vote as he wishes to

cast it and have it counted as cast, and which cannot be tampered with or manipulated in such a way that, though properly operated by the elector, it would seem to receive and record his vote without doing so. *State ex rel. Fenner v. Keating*, 53 M 371, 381, 163 P 1156.

23-3803. Providing voting machines — payment. (1) Commissioners and councils may provide approved voting machines as practicable.

(2) Not later than September 10, prior to a general election, the commissioners or council of a city may unite two (2) or more precincts to use a voting machine. Notice of the consolidation shall be given as provided by law for the change of election districts.

(3) Funds for voting machines may be provided by interest-bearing bonds, certificates of indebtedness, or other obligations. The term of the bonds, certificates, or other obligations may not exceed ten (10) years and they shall not be issued or sold at less than par.

History: En. Sec. 144, Ch. 368, L. 1969.

23-3804. Preparation of machines for use. (1) The registrar or city clerk shall put the proper ballots upon each voting machine corresponding with the sample ballots. The registrars or city clerks shall also:

- (a) Set, adjust, and put the machines in order;
- (b) Deliver the machines to the precincts together with necessary furniture and appliances;
- (c) Place a shield painted black and marked "not in use" over the keys or levers not in use on the voting machine.

(2) In primary elections a separate row or column shall be assigned to each political party and at least 1 row shall separate the rows assigned to the 2 major political parties. This row shall be used for the nonpartisan judicial ballot. The placement of the nonpartisan judicial ballot shall be such that the ballot of each political party appears in an unbroken row or column.

(3) In general elections the ballot shall be arranged and the names of the candidates rotated to conform as nearly as possible to the requirements for paper ballots.

(4) Candidates of the 2 major parties shall be rotated between the first 2 horizontal rows or vertical columns, and candidates of minor parties and independent candidates shall be rotated between succeeding rows or columns.

(5) The party designation of each candidate shall appear below his name in type as large as machine design will allow.

(6) The judicial ballot shall appear in the first 2 horizontal or vertical rows or columns as prescribed by section 23-3513.

(7) The election judges shall compare the ballots on the machine with sample ballots, ensure that all counters are set at zero and the machine is in order. They shall not thereafter permit the machine to be operated or moved except by electors voting. They shall also see that arrangements are made for voting write-in ballots on the machine, if the machine is so arranged.

History: En. Sec. 145, Ch. 368, L. 1969;
amd. Sec. 1, Ch. 116, L. 1977.

Amendments

The 1977 amendment added the second sentence of subsection (2); and made minor changes in phraseology and style.

23-3805. Write-in ballots. (1) If a voting machine allows registry or recording of votes for candidates whose names are not on the official ballot, these ballots are write-in ballots.

(2) A person whose name appears on a ballot shall not receive votes for the same office on a device for casting a write-in ballot.

History: En. Sec. 146, Ch. 368, L. 1969.

23-3806. Placement of machines—time voter to remain in booth—election board make-up. (1) The exterior of the voting machines and every part of the polling place shall be in plain view of the election judges.

(a) The machines shall be placed so that other persons on the premises cannot see how the voter casts his vote.

(b) The election judges shall not permit any person to remain in any position that would permit him or them to see how the voter votes or has voted.

(c) A voter shall not remain within the voting machine booth or compartment longer than is reasonably necessary to vote. If he refuses to leave, the election judges shall remove him.

(2) The election board of a precinct in which a voting machine is used consists of three (3) election judges and any special board of election judges appointed to count absentee ballots. If more than one (1) machine is used, one (1) additional election judge shall be appointed for each additional machine.

History: En. Sec. 147, Ch. 368, L. 1969.

23-3807. Registrar to instruct election judges. (1) Before each election, the registrar shall instruct all election judges in the use of the

machine and their duties. He shall give to each election judge who has received instruction and is fully qualified to conduct the election with the machine a certificate to that effect.

(2) The registrar shall call meetings of the election judges as necessary for instruction. Election judges shall attend meetings as necessary to receive the proper instructions.

(3) An election judge may not serve if voting machines are used unless he has received instruction, is fully qualified to perform duties in connection with the machine, and has received a certificate to that effect from the registrar. However, this section does not prevent an emergency appointment of an election judge.

History: En. Sec. 148, Ch. 368, L. 1969; amd. Sec. 41, Ch. 365, L. 1977.

Amendments

The 1977 amendment substituted "reg-

istrar" at the end of the first sentence of subsection (3) for "custodian"; and made minor changes in phraseology and punctuation.

23-3808. Publication of information concerning machines. Not more than ten (10) nor less than three (3) days before an election at which voting machines are used, the registrar or city clerk shall publish in a newspaper of general circulation in the county:

- (1) A diagram showing the voting machine with official ballot labels;
- (2) A statement of the locations where voting machines are on public exhibition;
- (3) Illustrated instructions on how to vote.

History: En. Sec. 149, Ch. 368, L. 1969.

23-3809. Voting machine to be exhibited. A voting machine shall be on exhibition in the office of the registrar or city clerk where voting machines are used. The registrar or city clerk shall demonstrate the voting machine to any inquiring voter.

History: En. Sec. 150, Ch. 368, L. 1969.

23-3810. Furnishing samples and supplies. (1) Not later than forty (40) days before an election, the secretary of state shall prepare samples of the printed matter and supplies named in this section and furnish one of each to the election officials where machines are used. The samples shall meet the requirements of the election and the construction of the machine used.

(2) The registrar or city clerk shall provide supplies for each machine including:

- (a) Written instructions for the election judges on testing and preparing the machines;
- (b) A certificate for the election judges to certify that they have tested and prepared the machine;
- (c) A certificate for the person preparing the machine to certify that the machine has been examined and is properly prepared for the election;
- (d) A certificate for party representatives to verify that they have witnessed the testing and preparation of the machines;

(e) A certificate for the deliverer of the machine to certify that he has delivered the machines to the polling places in good order;

(f) A card stating the penalty for tampering with or injuring a voting machine;

(g) Two (2) seals for sealing the voting machine;

(h) One (1) envelope with a detachable delivery receipt in which the keys to the voting machine can be sealed and delivered to the election officials having printed on it the designation and location of the election district, the number of the machine, the number on the protective counter after the machine has been prepared for the election, and the number of the seal;

(i) One (1) envelope in which keys to the voting machine can be returned after the election;

(j) Two (2) statements of canvass for election officers to report the canvass of votes and other necessary information relating to the election;

(k) Three (3) complete sets of ballot labels in a form prescribed by the secretary of state and two (2) diagrams of the face of the machine with the ballot labels on the machine, each having proper voter instructions;

(l) Six (6) instructions to election judges and six (6) notices of the instruction meeting;

(m) Six (6) certificates that election judges have attended the instruction meeting, received instruction, and are qualified to conduct the machine election.

History: En. Sec. 151, Ch. 368, L. 1969.

23-3811. Registry lists—provision for number of each ballot. If voting machines are used, the registry lists shall contain a column to enter the number of each ballot as indicated by the number on the machine counter. Books or blanks for making poll lists shall not be provided.

History: En. Sec. 152, Ch. 368, L. 1969.

23-3812. Assistance to illiterate, blind, or physically disabled voters. A voter who declares he is unable to vote because he cannot read or write, is blind, or physically disabled shall be assisted as provided in 23-3609.

History: En. Sec. 153, Ch. 368, L. 1969; and. Sec. 43, Ch. 334, L. 1977.

Amendments

The 1977 amendment deleted a former

subsection (2) reading "A person who deceives an elector voting under this section shall be punished as provided in section 23-4707, R. C. M. 1947"; and made a minor change in style.

23-3813. Counting the votes. When the polls close, the election judges shall immediately lock the machine or remove the recording device and open the registering or recording compartments in the presence of any person desiring to attend. They shall ascertain the number of votes cast for each candidate, canvass, record, announce, and return the votes as provided by law.

History: En. Sec. 154, Ch. 368, L. 1969.

23-3814. Procedure after count is ascertained. (1) After the count is ascertained, the election judges shall place the machine in full view of

the public for one (1) hour so that any person may view the number of votes cast.

(2) Immediately after the hour has passed, the election judges shall seal and lock the machine. Unless used in a city primary election or ordered opened earlier by a court or the county recount board, the machine shall remain sealed and locked for twenty (20) days.

(3) If a machine has been used in a city primary election, it shall remain locked and sealed for at least five (5) days, unless opened by court order.

History: En. Sec. 155, Ch. 368, L. 1969.

23-3815. Disposition of write-in ballots and tally sheets. (1) The election judges shall return write-in ballots in a sealed package endorsed "write-in ballots." The election judges shall indicate the precinct and county and file the package with the registrar or city clerk. Each package shall be preserved for six (6) months after the election and may be opened only upon order of a court or the county recount board. At the end of six (6) months, the package shall be destroyed by the registrar or city clerk unless a court orders otherwise.

(2) Tally sheets taken from the machine, if any, shall be returned in the same manner.

History: En. Sec. 156, Ch. 368, L. 1969.

23-3816. Return sheets—contents. Officers who furnish tally sheets shall also furnish return blanks and certificates to the election officers. The return sheets shall:

(1) Have each candidate's name designated by the same reference character that the name bears on the ballot labels and counters and allow for writing in a vote for the candidate in figures, words, or both;

(2) Provide for the return of the vote on questions;

(3) Have a blank for indicating the precinct, ward, number and make of machine used, and other necessary information;

(4) Have a certificate to be executed before the polls open by the election judges stating that all counters except the protective counter, if any, and except as otherwise noted, stood at "000" at the beginning of the election, that all counters were examined before the election, that ballot labels were correctly placed on the machine and corresponded to the sample ballot, and other statements as the particular machine may require;

(5) Have a second certificate stating the manner of closing the polls and verifying the returns; that the returns are correct; giving the indication of the public counter, poll list, and protective counter, if any. The certificate shall specify the procedure of canvassing the vote and locking the machine and shall be signed by the election officials. The certificate and attest of the election officers shall appear on each return sheet.

History: En. Sec. 157, Ch. 368, L. 1969.

23-3817. Experimental use of machines. Officials authorized to adopt voting machines, may provide for the experimental use at an election of

a machine, approved by the secretary of state, in one (1) or more precincts without a formal adoption or purchase of the machine. The use at an election is valid for all purposes as if the machine had been formally adopted.

History: En. Sec. 158, Ch. 368, L. 1969.

23-3818. Machine breakdowns—electors may vote by paper ballot upon request. (1) If a machine becomes unworkable or unfit for use, voting shall proceed on another available machine or as in cases where machines are not used. The registrar shall furnish each voting place with a supply of ballots and other supplies to be used in case of emergency.

(2) Where voting machines are used, an elector may request to vote by paper ballot instead of using the voting machines. The election judges shall provide the elector with a paper ballot when requested. Paper ballots shall be cast and counted by the election judges in the manner provided by law.

History: En. Sec. 159, Ch. 368, L. 1969.

23-3819. Use of separate paper ballots for voting on certain money issues where machines do not allow proper lockout. In precincts where voting machines are used and the machines do not allow proper lockout, separate paper ballots shall be issued for money issues which do not involve the question of incurring of a state indebtedness, issuance of state bonds or debentures other than for refunding, or the levy of a tax for state purposes.

History: En. Sec. 160, Ch. 368, L. 1969.

23-3820, 23-3821. Repealed.

Repeal

Sections 23-3820, 23-3821 (Secs. 161, 162, Ch. 368, L. 1969), relating to tampering

with voting machines, were repealed by Sec. 49, Ch. 334, Laws 1977.

23-3822. General election laws to apply. All laws applicable to elections where voting is not done by machine and all penalties prescribed for violations of those laws apply to elections and precincts where voting machines are used if they are not in conflict with the provisions of 23-3801 through 23-3819.

History: En. Sec. 163, Ch. 368, L. 1969; amd. Sec. 44, Ch. 334, L. 1977; amd. Sec. 42, Ch. 365, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 334 and once by Ch. 365. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 334, Laws of 1977, substituted "23-3801 through 23-3819" at the end of the section for "sections 23-3801 through 23-3821"; and made minor changes in punctuation.

Chapter 365, Laws of 1977, made the same changes as chapter 334.

CHAPTER 39

ELECTRONIC VOTING SYSTEMS

Section

23-3901. Purpose of act.

23-3902. Definitions.

23-3903. Use of electronic voting systems—paper ballots may be used upon request.

23-3904. Voting booths—sample ballots—arrangement of ballot information—write-in ballots—preparation and testing of devices.

23-3905. Procedure upon closing polls.

23-3906. Rules and regulations—specifications for devices and equipment.

23-3907. Applicability of election laws in general where not in conflict with this chapter.

23-3901. Purpose of act. The purpose of sections 23-3902 through 23-3907 is to authorize the use of electronic voting systems in which the voter records his votes by means of marking or punching a ballot or one or more ballot cards, which are so designed that votes may be counted by data processing machines at one or more counting places.

History: En. Sec. 164, Ch. 368, L. 1969.

23-3902. Definitions. As used in sections 23-3903 through 23-3907, unless otherwise specified:

(1) "Automatic tabulating equipment" includes apparatus necessary to automatically examine and count votes as designated on ballots and data processing machines which can be used for counting ballots and tabulating results.

(2) "Ballot card" means a ballot which is voted by the process of punching.

(3) "Ballot labels" means the cards, paper, booklet, pages or other materials containing the names of offices and candidates and statements of measures to be voted on.

(4) "Ballot" may include ballot cards, ballot labels and paper ballots.

(5) "Counting location" means a location selected by the registrar or city clerk for the automatic processing or counting, or both, of ballots which may be in the same county or in another county.

(6) "Electronic voting system" means a system of casting votes by use of marking devices and tabulating ballots employing automatic tabulating equipment or data processing equipment.

(7) "Marking device" means either an apparatus in which ballots or ballot cards are inserted and used in connection with a punch apparatus for the piercing of ballots by the voter or any approved device for marking a paper ballot with ink or other substance which will enable the ballot to be tabulated by means of automatic tabulating equipment.

History: En. Sec. 165, Ch. 368, L. 1969.

23-3903. Use of electronic voting systems—paper ballots may be used upon request. (1) Electronic voting systems may be used in elections, after approval as provided by law, provided that such systems enable the voter to cast a vote in secrecy for all offices and all measures on which he is entitled to vote, and that the automatic tabulating equipment may be

set to reject all votes for any office or measure when the number of votes therefor exceeds the number which the voter is entitled to cast, or when the voter is not by law entitled to cast a vote for the office or measure.

(2) Electronic voting systems may be used at primary elections provided the voter can secretly select the party for which he wishes to vote, and the automatic tabulating equipment will count only votes for the candidates of one party, and will reject all votes for an office when the number of votes therefor exceeds the number which the voter is entitled to cast, and will reject all votes of a voter cast for candidates of more than one party.

(3) So far as applicable, the procedure provided for voting paper ballots shall apply.

(4) The governing body of any county or city may, after approval as provided by law, adopt, experiment with, or abandon any electronic voting system herein authorized and approved for use in the state, and may use such system in all or a part of the precincts within its boundaries, or in combination with paper ballots. It may enlarge, consolidate or alter the boundaries of the precincts where an electronic voting system is to be used.

(5) In precincts where an electronic voting system is used, an elector may request a paper ballot to cast his vote and the election judges shall supply the elector with the paper ballot when so requested. These ballots will be cast and counted by the election judges in the manner provided by law.

History: En. Sec. 166, Ch. 368, L. 1969.

23-3904. Voting booths—sample ballots—arrangement of ballot information—write-in ballots—preparation and testing of devices. (1) In precincts where an electronic voting system is used, a sufficient number of voting booths shall be provided for the use of such systems and the booths shall be arranged in the same manner as provided for use with paper ballots.

(2) The officials charged with the duty of providing ballots, ballot cards or ballot labels for any polling place shall provide therefor sample ballots, ballot cards or ballot labels which shall be exact copies of the official ballots which are caused to be printed by them; said sample ballots shall be arranged in the form of a diagram showing the front of the marking device as it will appear after the ballots are arranged therein for voting on election day. Such sample ballots shall be posted by the election judges near the entrance of the voting booths and shall be there open to public inspection during the whole of election day.

(3) The ballot information, whether placed on the ballot or on the marking device, shall, as far as practicable, be in the order of arrangement provided for paper ballots except that such information may be in vertical or horizontal rows, or on a number of separate pages. Ballots for all questions must be provided in the same manner and must be arranged on or in the marking device in the places provided for such purpose. Any

voter who spoils his ballot or ballot card or makes an error may return it to the election board and secure another.

(4) A separate write-in ballot, which may be in the form of a paper ballot, card or envelope in which the elector places his ballot card after voting shall be provided where necessary to permit electors to write in the names of persons whose names are not on the ballot.

(5) The registrar or city clerk shall cause the marking devices to be put in order, set, adjusted and made ready for voting when delivered to the election precincts. Before the opening of the polls the election judges shall compare the ballots used in the marking device with the sample ballots furnished, and see that the names, numbers and letters thereon agree, and shall certify thereto on forms provided for this purpose. The certification shall be filed with the election returns.

(6) Within five (5) days prior to the election day, the registrar or city clerk shall have the automatic tabulating equipment tested to ascertain that the equipment will correctly count the votes cast for all offices and on all measures. Public notice of the time and place of the test shall be given at least forty-eight (48) hours prior thereto by publication once in one or more daily or weekly newspapers published in the county, city, or town using such equipment if a newspaper is published therein, otherwise in a newspaper of general circulation therein. The test shall be open to representatives of the political parties, candidates, the press and the public. The test shall be conducted by processing a pre-audited group of ballots so punched or marked as to record a predetermined number of valid votes for each candidate and on each measure, and shall include for each office one or more ballots which have votes in excess of the number allowed by law in order to test the ability of the automatic tabulating equipment to reject such votes. If any error is detected, the cause therefor shall be ascertained and corrected and an errorless count shall be made before the automatic tabulating equipment is approved. The test shall be repeated immediately before the start of the official count of the ballots, in the same manner as set forth above. After the completion of the count, the programs used and ballots shall be sealed, retained and disposed of as provided for paper ballots.

History: En. Sec. 167, Ch. 368, L. 1969.

23-3905. Procedure upon closing polls. (1) In precincts where an electronic voting system is used, as soon as the polls are closed, the election judges shall secure the marking devices against further voting. They shall thereafter open the ballot box and count the number of ballots or envelopes containing ballots that have been cast to determine that the number of ballots does not exceed the number of voters shown on the poll or registry lists. If there is an excess, this fact shall be reported in writing to the appropriate election officer in charge with the reasons therefor, if known. The total number of voters shall be entered on the tally sheets. The election judges shall thereupon count the write-in votes and prepare a return of such votes on forms provided for this purpose. If ballot cards are used, all ballots on which write-in votes have been recorded shall be serially numbered, starting with the number one, and the same number shall be placed on the ballot card of the voter. The election judges shall compare

the write-in votes with the votes cast on the ballot card, and if the total number of votes for any office exceeds the number allowed by law, a notation to that effect shall be entered on the back of the ballot card and it shall be returned to the counting location in an envelope marked "defective ballots". Such invalid votes may not be counted. So far as applicable, provisions relating to defective paper ballots shall apply.

(2) The election judges shall place all ballots that have been cast in the container provided for that purpose, which shall be sealed and delivered immediately by the election judges to the counting location or other designated place, together with the unused, void, and defective ballots and returns.

(3) All proceedings at the counting location shall be under the direction of the registrar or city clerk under the observation of at least three election judges designated by the commissioners or city council and shall be open to the public, but no persons except those employed and authorized for the purpose may touch any ballot, ballot container, or return. If any ballot is damaged or defective so that it cannot properly be counted by the automatic tabulating equipment, a true duplicate copy shall be made of the damaged ballot in the presence of witnesses and substituted for the damaged ballot. Likewise, a duplicate ballot shall be made of a defective ballot which may not include the invalid votes. All duplicate ballots shall be clearly labeled "duplicate", shall bear a serial number which shall be recorded on the damaged or defective ballot, and shall be counted in lieu of the damaged or defective ballot.

(4) The return printed by the automatic tabulating equipment, to which has been added the return of write-in and absentee votes, shall constitute the official return of each precinct or election district. Upon completion of the count the returns shall be open to the public.

History: En. Sec. 168, Ch. 368, L. 1969; amd. Sec. 43, Ch. 365, L. 1977.

Amendments

The 1977 amendment substituted "elec-

tion judges" in the seventh sentence of subsection (1) for "inspectors or other appropriate precinct election officials"; and made minor changes in phraseology and punctuation.

23-3906. Rules and regulations—specifications for devices and equipment. (a) The secretary of state, state auditor and president of the Montana county clerk and recorders association shall constitute a board of election devices, which shall promulgate rules for the administration of this section, and shall approve the marking devices and automatic tabulating equipment used in electronic voting systems.

(b) No marking device or automatic tabulating equipment shall be approved unless it fulfills the following requirements:

(1) It shall permit and require voting in absolute secrecy.

(2) It shall permit each elector to vote at any election for all persons and offices for whom and for which he is lawfully entitled to vote, and no others; to vote for as many persons for an office as he is entitled to vote for; to vote for or against any question upon which he is entitled to vote; and to vote, where applicable, for all candidates of one (1) party or to vote a split ticket as he desires.

(3) It shall permit each elector, at presidential elections, by one (1) punch or mark to vote for the candidates of that party for presidential elector as a group.

(4) It shall comply with all other requirements of the election laws so far as they are applicable.

(5) No electronic voting system presently in use by any county, city or town in Montana shall be disapproved for use in such county, city or town by the board, except upon application by the governing body of said county, city or town.

History: En. Sec. 169, Ch. 368, L. 1969.

23-3907. Applicability of election laws in general where not in conflict with this chapter. All laws of this state applicable to elections where voting is done in another manner than by electronic voting systems and all penalties prescribed for violation of such laws, shall apply to elections and precincts where electronic voting systems are used, in so far as they are not in conflict with the provisions of sections 23-3901 through 23-3906.

History: En. Sec. 170, Ch. 368, L. 1969.

CHAPTER 40

CANVASS OF VOTES—RETURNS AND CERTIFICATES

- Section**
- 23-4001. Votes to be publicly canvassed upon closing polls.
 - 23-4002. **Method of canvass.**
 - 23-4003. Counting ballots—pollbooks.
 - 23-4004. **Marking rejected ballots.**
 - 23-4005. Signing and certifying pollbooks.
 - 23-4006. Items to be sent to registrar by election judges—manner of sending.
 - 23-4007. Disposition of items by registrar.
 - 23-4008. Disposition of items in event of contest.
 - 23-4009. Commissioners as board of county canvassers—meetings—registrar as clerk of board.
 - 23-4010. Canvassing returns, time of—messenger—certification that polls were not open.
 - 23-4011. County canvass to be public—nonessentials to be disregarded.
 - 23-4012. Statement of the result to be entered of record.
 - 23-4013. Declaration of persons elected.
 - 23-4014. Certificates issued by the clerk.
 - 23-4015. State returns, how made and transmitted.
 - 23-4016. Composition and meeting of board of state canvassers.
 - 23-4017. **Messenger may be sent for returns.**
 - 23-4018. Governor to issue commissions.
 - 23-4019. Defect in form of returns to be disregarded.

23-4001. Votes to be publicly canvassed upon closing polls. When the polls are closed, the election judges shall immediately canvass the votes. The canvass shall be public and continue without adjournment until completed and the result is publicly declared.

History: En. Sec. 171, Ch. 368, L. 1969.

23-4002. Method of canvass. (1) The canvass shall begin by a comparison of the pollbooks and the correction of any mistakes until they agree.

(2) The election judges shall take ballots unopened out of the box to determine whether each ballot is single.

(3) They shall count the ballots to ensure that the number of ballots corresponds with the number of names on the pollbooks.

(4) A ballot which is not endorsed by the official stamp is void and shall not be counted. A ballot or part of a ballot is void and shall not be counted if the elector's choice cannot be determined. If part of a ballot is sufficiently plain to determine the elector's intention, the election judges shall count that part.

(5) If two (2) or more ballots are folded together to look like a single ballot, they shall be laid aside until the count is complete. The election judges shall compare the count with the pollbooks and if a majority believe that the ballots folded together were voted by one (1) elector, they must be rejected; otherwise they must be counted.

(6) If the ballots exceed the number of names on the pollbooks they shall be placed in the box, and one (1) of the election judges shall publicly draw from the box and destroy unopened ballots equal to the excess. The election judges shall record in the pollbooks the number of ballots destroyed.

History: En. Sec. 172, Ch. 368, L. 1969.

Determining Elector's Intention

Where, from the manner in which a ballot was marked, it was impossible to determine the elector's choice, the ballot was void under prior section, and should not have been counted in an election contest. *Carwile v. Jones*, 38 M 590, 598, 101 P 153.

A ballot bearing a rather indistinct "X" before contestant's name but sufficient to be discernible should have been counted for him where there was no erasure and the elector voted for no other candidate for that office; and under the rule that the elector's intention must plainly appear, where the voter marked two squares for the office of sheriff, one of which showed an extra line through the "X" indicating perhaps, that the voter changed his mind but for the fact that squares before the names of other candidates were marked similarly, the intention was not clear and the ballot should not have been counted. *Peterson v. Billings*, 109 M 390, 392, 96 P 2d 922, distinguished in — M —, 539 P 2d 1182.

Under prior section, and the rule that election laws must be liberally construed,

a ballot showing the intersection of the "X" outside the square should have been counted for contestant, and one showing the intersection of the cross squarely on the line of the square was properly so counted for him. *Peterson v. Billings*, 109 M 390, 393, 96 P 2d 922, distinguished in — M —, 539 P 2d 1182.

Official Stamp on Ballot Stub

Where ballots had been delivered to electors by the judges of election with the official stamp apparently in the place in which the law requires it to be, although in reality it was on the stub instead of on the ballot proper, the act of the judges in removing the stamp with the stub, thus leaving the ballot without the official designation, did not render the ballots void, and the same should have been counted. *Harrington v. Crichton*, 53 M 388, 396, 164 P 537.

School Elections

The validity of contested school elections is determined by the laws of general elections, including canvassing statute. *Woolsey v. Carney*, 141 M 476, 378 P 2d 658.

23-4003. Counting ballots—pollbooks. (1) When the ballots and poll lists agree, the election judges shall count and determine the votes cast for each person.

(2) In counting, the ballots shall be opened singly by one (1) of the election judges and the contents read aloud to the other judges.

(3) As the ballots are read, each clerk must write on a tally sheet the name of every person voted for and the office, and keep tallies of the number of votes for each person.

(4) The tally sheets shall be compared and their correctness ascer-

tained, and the clerks, under the supervision of the election judges, shall immediately write in the pollbooks:

- (a) The names of all persons who received votes;
- (b) The offices for which they received votes;
- (c) Total votes received by each person as shown by the tally sheets.
- (5) A ballot or vote rejected by the election judges shall not be included in the count.

History: En. Sec. 173, Ch. 368, L. 1969.

23-4004. Marking rejected ballots. A ballot rejected for illegality shall be marked by the election judges, by writing across the face "Rejected on the ground of, " filling the blank with a brief statement of the reasons for the rejection. The statement shall be dated and signed by a majority of the judges.

History: En. Sec. 174, Ch. 368, L. 1969.

23-4005. Signing and certifying pollbooks. Immediately after the votes are counted and the ballots sealed up, the pollbooks shall be signed and certified to by the election judges and clerks in a form prescribed by the secretary of state.

History: En. Sec. 175, Ch. 368, L. 1969.

23-4006. Items to be sent to registrar by election judges—manner of sending. (1) Before they adjourn, the election judges shall enclose in a strong envelope or package, securely sealed and directed to the registrar:

- (a) The precinct registers,
- (b) The lists of persons challenged,
- (c) Both of the pollbooks,
- (d) Both of the tally sheets.

(2) The election judges shall enclose in a separate package or envelope, securely sealed and directed to the registrar, all unused ballots with the numbered stubs attached.

(3) The election judges shall enclose in a separate package or envelope, securely sealed and directed to the registrar, all ballots voted including those not counted or allowed, and all detached stubs from ballots voted. This envelope shall be endorsed on the outside "ballots voted."

(4) Each election judge shall write his name across the seal of each of the envelopes or packages. The ballot box shall be returned to the registrar.

(5) The envelopes or packages required by this section shall be delivered to one (1) of the election judges chosen by lot, unless otherwise agreed upon, before they adjourn. The judge shall deliver them to the registrar in person or by registered mail no later than 10 a. m. on the day following the election.

History: En. Sec. 176, Ch. 368, L. 1969.

DECISIONS UNDER FORMER LAW

One Copy To Be Returned

The law contemplates that the election board in the precinct will return to the clerk and recorder but one tally sheet and

one copy of the pollbook. State ex rel. Lynch v. Batani, 103 M 353, 361, 62 P 2d 565.

23-4007. Disposition of items by registrar. (1) When the registrar receives the packages or envelopes, he shall file those containing the ballots voted and detached stubs and the unused ballots and keep them unopened for twelve (12) months. After twelve (12) months, if there is no contest begun in a court or no recount, he shall, without opening them or examining their contents, either burn the envelopes in an approved incinerator, destroy them in a mechanical shredder, or bury them in a sanitary landfill under his on-site supervision.

(2) The registrar shall file the envelopes or packages containing the precinct registers, certificates of registration, pollbooks, tally sheets, and oaths of election officers. He shall keep them unopened until the commissioners meet to canvass the returns. The commissioners shall open the envelopes or packages.

(3) Immediately after the returns are canvassed, the registrar shall file the pollbooks, election records, and the papers delivered to the commissioners.

History: En. Sec. 177, Ch. 368, L. 1969;
amd. Sec. 1, Ch. 100, L. 1974.

proved incinerator * * * under his on-site supervision" at the end of subsection (1); and made a minor change in phraseology.

Amendments

The 1974 amendment inserted "in an ap-

23-4008. Disposition of items in event of contest. If there is a contest within twelve (12) months, the registrar shall keep the envelopes or packages unopened until the contest is finally determined and then destroy them. If the court has custody of the envelopes or packages as evidence, they are in the custody of the court and the registrar shall not destroy them.

History: En. Sec. 178, Ch. 368, L. 1969.

23-4009. Commissioners as board of county canvassers—meetings—registrar as clerk of board. (1) The commissioners are ex officio a board of county canvassers and shall meet as the board of county canvassers at the usual place of meeting of the commissioners within three (3) days after each election, at 8 a. m. to canvass the returns.

(2) If one (1) or more of the commissioners cannot attend the meeting, his place shall be filled by one (1) or more county officers in this order: treasurer, assessor, sheriff, so that the board of county canvassers membership equals membership on the board of commissioners.

(3) The registrar is clerk of the board of county canvassers.

History: En. Sec. 179, Ch. 368, L. 1969.

Change in Membership of Board

The members of a county board of canvassers do not necessarily embrace the same officers, but are subject to changes which depend upon circumstances, and a writ of mandate, issued to compel such board to reconvene and canvass the returns from an election precinct which they had excluded, is properly directed to the

particular individuals comprising the board, describing them by name, and as constituting the board of county canvassers of election returns for a certain county of the state, the particular members of such board at the time in question being the persons against whom obedience must, if necessary, be enforced. *State ex rel. Leech v. Board of Canvassers of Choteau County*, 13 M 23, 29, 31 P 879.

23-4010. Canvassing returns, time of — messenger — certification that polls were not open. (1) If all returns are in at the time of the meeting, the board of county canvassers shall immediately canvass the returns.

(2) If all returns are not received, the board shall postpone the canvass from day to day until all returns are received or until there have been seven (7) postponements.

(3) If the returns from an election precinct have not been received by the registrar within seven (7) days after an election, he shall immediately send a messenger to the election judges. The messenger must obtain the returns from the judges and return them to the registrar.

(4) If it appears to the board that the polls were not open in a precinct, the board shall certify this to the registrar. The registrar shall enter the certification in the minutes and in the statement required by section 23-4012.

History: En. Sec. 180, Ch. 368, L. 1969.

23-4011. County canvass to be public—nonessentials to be disregarded.

(1) The canvass shall be public. It shall proceed by opening the returns, determining the vote for each person and each proposition from each precinct, and declaring the results.

(2) The returns shall not be rejected because of failure to show who administered the oath to the election judges or clerks, because of failure to complete all the certificates in the pollbooks, or because of failure of any other act making up the returns that is not essential to determine for whom the votes were cast.

History: En. Sec. 181, Ch. 368, L. 1969; amd. Sec. 44, Ch. 365, L. 1977.

Amendments

The 1977 amendment substituted "because of failure to" after "rejected" in subsection (2) for "if they do not"; inserted "because of" after "clerks" and "or" in subsection (2); and made minor changes in phraseology and punctuation.

Rejection of Returns

A county board of canvassers has no authority to inquire into the validity of a certificate of nomination of a nominee for office, and therefore, where the election returns are genuine and properly certified, prohibition will not lie to restrain the board from canvassing such returns and counting the vote cast for such person upon the ground that the nomination was invalid. *Pigott v. Board of Canvassers of Cascade County*, 12 M 537, 538, 31 P 536.

The duties of a county canvassing board are ministerial, and such board has no authority to exclude the returns of an election precinct, regularly made, upon the ground that the voting was shown by affidavits to be illegal, and, having done so, may be compelled by mandamus to canvass such returns. *State ex rel. Leech v.*

Board of Canvassers of Choteau County, 13 M 23, 30, 31 P 879. See also *State ex rel. Breen v. Toole*, 32 M 4, 10, 79 P 403; *Poe v. Sheridan County*, 52 M 279, 288, 157 P 185.

Where a county canvassing board issued a certificate of election to a candidate for the legislative assembly after unlawfully excluding the returns of a particular precinct, and then adjourned sine die, such board may be compelled by mandamus to reconvene and canvass the returns so excluded, and issue a certificate of election to the person shown by a complete canvass to be entitled thereto. *State ex rel. Leech v. Board of Canvassers of Choteau County*, 13 M 23, 31, 31 P 879.

Returns in the pollbook being left blank, and the certificate thereto not being properly filled in, are not grounds for rejecting returns, nor are they such irregularities as will entitle a board of canvassers to reject them. *State ex rel. Leech v. Board of Canvassers of Choteau County*, 13 M 23, 31, 31 P 879.

It is the duty of the board of canvassers to procure the check lists and surrendered lists before rejecting the vote of a precinct as returned by the pollbooks alone. *State ex rel. Leech v. Board of Canvassers of Choteau County*, 13 M 23, 31, 31 P 879.

23-4012. Statement of the result to be entered of record. As soon as the results are declared, the clerk of the board shall enter on the records:

- (1) Votes cast in the county;
- (2) Names of the persons voted for and the propositions voted upon;
- (3) Office for which each person was voted for;
- (4) Votes by precinct for each person and for and against each proposition;
- (5) Votes by county for each person, and for and against each proposition.

History: En. Sec. 182, Ch. 368, L. 1969.

23-4013. Declaration of persons elected. (1) The board shall declare elected the persons having the highest number of votes given for each county and district office voted for in only one county, other than a legislator or a judge of the district court and each precinct office.

(2) If a recount shows that two or more persons received an equal and sufficient number of votes for the office of state senator or state representative, the county recount board shall certify this to the governor.

History: En. Sec. 183, Ch. 368, L. 1969; amd. Sec. 45, Ch. 365, L. 1977.

Amendments

The 1977 amendment substituted "county and district office voted for in only one county, other than a legislator or a judge of the district court and each precinct office" at the end of subsection (1) for "office to be filled in a single county or subdivision of a county"; and made a minor change in style.

Deceased Candidate Receives Majority

Where a candidate for re-election to a county office died 24 days before election,

his death known generally to electors, but his name placed on ballot and majority voted for him supposing to retain his widow, appointed to fill the vacancy, until the next general election, a write-in candidate whom they intended to defeat, receiving the highest vote cast for any living person, held, on his application for writ of mandate to compel the county canvassing board to reconvene and cause certificate of election issued to him, that write-in candidate elected and entitled to the office. State ex rel. Wolff v. Geurkink, 111 M 417, 426, 109 P 2d 1094, 133 ALR 304.

23-4014. Certificates issued by the clerk. (1) The clerk shall immediately deliver to each person declared elected by the board a certificate of election signed by him and authenticated with the seal of the board.

(2) The certificate shall state that the official bond must be filed within 30 days after notice of election or appointment and that failure to file the bond vacates the office.

History: En. Sec. 184, Ch. 368, L. 1969; amd. Sec. 46, Ch. 365, L. 1977.

Amendments

The 1977 amendment substituted "declared elected by the board" in subsection (1) for "elected"; deleted a subsection (3) which read "This certificate shall not

be issued to persons elected district judge"; and made a minor change in style.

Cross-Reference

County clerk to issue certificate of election, sec. 16-1157.

23-4015. State returns, how made and transmitted. (1) After a general or special election, the clerk shall make an abstract of the vote for congressional offices, state or district offices voted for in more than one county, members of the legislature, and judges of the district court.

(2) The clerk shall seal the abstract, endorse it "Election Returns", and immediately send it to the secretary of state by certified or registered mail.

History: En. Sec. 185, Ch. 368, L. 1969; district court" at the end of subsection
amd. Sec. 47, Ch. 365, L. 1977. (1) for "members of the legislative as-

Amendments

The 1977 amendment substituted "con- justices of the peace"; inserted "certified
gressional offices, state or district offices or" before "registered mail" at the end
voted for in more than one county, mem- of subsection (2); and made a minor
bers of the legislature, and judges of the change in punctuation.

23-4016. Composition and meeting of board of state canvassers. With-
in 20 days after the election or sooner if the returns are all received, the
state auditor, superintendent of public instruction, and attorney general
shall meet as a board of state canvassers in the office of the secretary of state
and determine the vote. The secretary of state, who is secretary of the
board, shall make out and file in his office a statement of the canvass and
transmit a copy to the governor.

History: En. Sec. 186, Ch. 368, L. 1969; made minor changes in punctuation and
amd. Sec. 21, Ch. 365, L. 1977. style.

Amendments

The 1977 amendment substituted "super-
intendent of public instruction" in the
first sentence for "state treasurer"; and

Cross-References

Board transferred to office of secretary
of state, sec. 82A-2102.

23-4017. Messenger may be sent for returns. If the returns from all
counties have not been received five (5) days before the meeting of
the board of state canvassers, the secretary of state shall immediately
send a messenger to the registrar of each delinquent county. The regis-
trar shall furnish the messenger with a certified copy of the statement
required by section 23-4012.

History: En. Sec. 187, Ch. 368, L. 1969.

23-4018. Governor to issue commissions. Upon receipt of the state-
ment required by section 23-4016, the governor shall issue commissions
to the persons elected. If the governor has been elected to succeed himself,
the secretary of state shall issue the commission.

History: En. Sec. 188, Ch. 386, L. 1969.

23-4019. Defect in form of returns to be disregarded. No declaration
of an election result, commission, or certificate shall be withheld because
of a defect or informality in the returns of any election if it can be
determined with reasonable certainty the office intended and the person
elected.

History: En. Sec. 189, Ch. 368, L. 1969.

CHAPTER 41

RECOUNTS

Section

- 23-4101. Recount of votes, order for—application, contents and time for making—
hearing—determination by court.
- 23-4102. Recount limited to precincts and offices specified in order.
- 23-4103. Conditions under which recount to be made.
- 23-4104. Failure to comply with provisions for counting votes, presumption of in-
correctness from.
- 23-4105. Ordering in another judge—court not divested of jurisdiction by failure to
hear application within prescribed time.
- 23-4106. Limitation of recount to certain precincts.
- 23-4107. Deposit of expense of recount—disposition—compensation of canvassing of-
ficials.
- 23-4108. Procedure when more than one application for recount made.
- 23-4109. Manner of recounting ballots.
- 23-4110. Service of copy of application on candidate originally found to be elected—
hearing.
- 23-4111. Sealing recounted ballots.
- 23-4112. Certificates of election, effect of recount on.
- 23-4113. Determining total vote cast for all candidates for an office.
- 23-4114. County recount board, board of county commissioners as—absent and dis-
qualified members—clerk.
- 23-4115. Meeting of board when recount requested.
- 23-4116. Persons entitled to appear at recount—opening and recount of ballots.
- 23-4117. Procedure after recount.
- 23-4118. Reconvening state board of canvassers—re-canvass by state board—corrected
abstract of votes—new certificate of election or nomination.
- 23-4119. Tie vote after recount.
- 23-4120. Procedure upon tie vote for United States representative—supreme court
justice—district court judge—legislator.
- 23-4121. Procedure upon tie vote for state executive officers—county officers other than
county commissioner—commissioners.
- 23-4122. Expenses of recount.

23-4101. Recount of votes, order for—application, contents and time for making—hearing—determination by court. (1) Within five (5) days after the canvass of election returns, an unsuccessful candidate for any public office at a general, special, or city election may apply to the district court of the county where the election was held for an order directing the canvassing body to make a recount of the votes cast in any or all of the precincts.

(2) The application shall specify the grounds for a recount and be verified by the applicant that the matters contained in it are true to the best of the applicant's knowledge, information, and belief.

(3) Within five (5) days after filing of the application, the judge shall hear the application and determine its sufficiency.

(4) If the judge finds there is probable cause to believe that the votes cast for the applicant were not correctly counted, he shall order the board of county canvassers to assemble within five (5) days after the order is issued at a time and place fixed by the order. The board shall meet and recount the ballots as specified in the order.

History: En. Sec. 190, Ch. 368, L. 1969.

Salaries withheld pending contests, secs. 59-508, 59-509.

Cross-References

Application of Montana Rules of Civil Procedure to recount proceedings, see M. R. Civ. P., Rule 81(a), Table A.

Application Timely

Where the board was compelled by writ of mandate to reconvene by the supreme

court and correct its findings with relation to two candidates for district judge, the application filed within five days after the corrected canvass was timely. *State ex rel. Riley v. District Court*, 103 M 576, 586, 64 P 2d 115.

Candidate for District Judge

Any unsuccessful candidate, including a candidate for the office of district judge, may apply to the district court for a recount. *State ex rel. Riley v. District Court*, 103 M 576, 580, 64 P 2d 115.

Candidates for Legislature

Recount statutes apply to candidates for the state senate and house of representatives. *State ex rel. Ainsworth v. District Court*, 107 M 370, 372, 86 P 2d 5.

Courts cannot try contests for seats in the legislature or decide issues involved in such contests, but mandamus lies to compel the court to perform the duty specially imposed upon it by recount statutes, the election certificate does not ensure acceptance of a candidate as a member of either house, but merely furnishes prima facie evidence that the majority of voters voted for him. *State ex rel. Ainsworth v. District Court*, 107 M 370, 376, 86 P 2d 5.

Function and Jurisdiction of Court

District court committed error in dismissing the application for a recount on the ground that applicant, convicted of a felony in federal court, lost his citizenship. *State ex rel. Stone v. District Court*, 103 M 515, 519, 63 P 2d 147.

The court could proceed in any suitable manner or mode most conformable "to the spirit" of the code in the absence of specific direction as to how proceedings shall be conducted, and was within its jurisdiction in directing canvassers' attention to sections of the codes covering points in dispute. *State ex rel. Riley v. District Court*, 103 M 576, 587, 64 P 2d 115. (But see *State ex rel. Peterson v. District Court*, 107 M 482, 488, 86 P 2d 403, below.)

A recount of ballots is not made in the presence of the district judge ordering it; in acting, the board is not required to ask the advice of the judge as to whether ballots are or are not properly marked, and he may not give such advice; the board is in duty bound to "hear all, consider all, and then decide." *State ex rel. Peterson v. District Court*, 107 M 482, 486, 86 P 2d 403.

The rule that district courts may not advise boards of county canvassers on questions arising on a recount of ballots as to the legality or illegality of ballots cast, etc., applies also to the supreme court on application for extraordinary relief by way of writs, and it cannot control the actions of such boards indirectly

by directions or suggestions to district courts. (If *State ex rel. Riley v. District Court*, 103 M 576, 64 P 2d 115, be open to a contrary construction it is to that extent overruled.) *State ex rel. Peterson v. District Court*, 107 M 482, 488, 86 P 2d 403.

The law relating to proceedings for election recounts specifically divides the functions of the court and the canvassing board. The court determines the grounds of and necessity for a recount and orders it done. The board is entrusted with the duty of making the recount, just as the judges and clerks of election are entrusted with the duty of making the count and certifying thereto in the first place. *State ex rel. Peterson v. District Court*, 107 M 482, 485, 86 P 2d 403.

Grounds Sufficient

Where application for writ of supervisory control set forth that the votes were not correctly counted, such ground was sufficient to justify the court in finding that the votes "might not" have been correctly counted, and writ accordingly issued directing respondents to order the recount. *State ex rel. Thomas v. District Court*, 116 M 510, 511, 154 P 2d 980.

Purpose of Act

The sole purpose of the recount statutes is to determine, in a doubtful case, whether the official canvass of the vote was correct, and where the office of state senator or representative is concerned, the election certificate does not ensure one's acceptance as a member of either house, nor affect the ultimate right to the office, nor can the recount infringe upon the assembly's right to judge of the elections, returns and qualifications of its members in contravention of section 9, article V of the constitution. *State ex rel. Ainsworth v. District Court*, 107 M 370, 372, 86 P 2d 5.

Recount Proceeding Not Election Contest

A proceeding to obtain a recount of votes is in no sense of the word an election contest, it is absolutely independent of the law relating to contesting of elections and either or both remedies are available. *State ex rel. Peterson v. District Court*, 107 M 482, 484, 86 P 2d 403.

Successive Recounts

Where an unsuccessful candidate for sheriff obtained a recount and was declared elected, and his opponent, the former successful but then unsuccessful candidate also asked for and was granted a recount, on application for a writ of supervisory control, the five-day limitation commenced to run from the time the board of canvassers announced the result of the

first recount, and the application coming within that time, the court had jurisdiction to grant the second recount. State ex rel. Peterson v. District Court, 107 M 482, 485, 86 P 2d 403.

Wrongful Canvass

Recount statutes do not afford a legal

remedy for an alleged wrongful canvass by a county canvassing board, and therefore do not defeat the right of a citizen to compel proper performance of their duty by writ of mandate. State ex rel. Lynch v Batani, 103 M 353, 358, 62 P 2d 565.

DECISIONS UNDER FORMER LAW

Constitutionality

Former chapter on recounts was held constitutional as to sufficiency of title as

to due process of law. State ex rel. Riley v. District Court, 103 M 576, 584, 586, 64 P 2d 115.

23-4102. Recount limited to precincts and offices specified in order. The board of canvassers shall recount votes only in those precincts and for those offices specified in the court order.

History: En. Sec. 191, Ch. 368, L. 1969.

23-4103. Conditions under which recount to be made. A recount shall be made under any of the following conditions:

(1) If a candidate for a county or district office voted for in only one county, other than a legislator or a judge of the district court, or a precinct office is defeated by a margin not exceeding $\frac{1}{4}$ of 1% of the total votes cast or by a margin not exceeding 10 votes, whichever is greater, he may within 5 days after the official canvass file with the registrar a verified petition stating he believes a recount will change the result and a recount of the votes for the office or nomination should be had.

(2) If a candidate for a congressional office, a state or district office voted on in more than one county, the legislature, or judge of the district court is defeated by a margin not exceeding $\frac{1}{4}$ of 1% of the total votes cast for all candidates for the same position, he may within 5 days after the official canvass file a petition with the secretary of state as set forth in subsection (1). The secretary of state shall immediately notify each registrar whose county includes any precincts which voted for the same office by certified or registered mail, and a recount shall be conducted in those precincts.

(3) If a question submitted to the vote of the people of the state is decided by a margin not exceeding $\frac{1}{4}$ of 1% of the total votes cast for and against the question, a petition as set forth in subsection (1) may be filed with the secretary of state. This petition shall be signed by not less than 100 electors of the state representing at least five counties of the state and be filed within 5 days after the official canvass.

(4) The secretary of state shall immediately notify each registrar by certified or registered mail of the filing of the petition, and a recount shall be conducted in all precincts in each county.

(5) If there is a tie vote, the board making the canvass shall certify the vote:

(a) to the registrar, if the election was for a county or district office voted on in only one county, other than a legislator or a judge of the district court, or a precinct office or a ballot issue voted on in only one county;

(b) to the secretary of state, if the election was for a congressional office, a state or district office voted on in more than one county, the legislature, or judge of the district court or a ballot issue voted on in more than one county.

(6) When a tie has been certified to the registrar or secretary of state, as provided in subsection (5), he shall proceed as if a petition for a recount has been filed. If a tie exists after the recount, the tie shall be resolved as provided by law.

History: En. Sec. 192, Ch. 368, L. 1969; amd. Sec. 48, Ch. 365, L. 1977.

Amendments

The 1977 amendment substituted "for a county or district office voted for in only one county, other than a legislator or a judge of the district court, or a precinct office" in subsection (1) for "other than for the office of district judge"; substituted "for a congressional office, a state or district office voted on in more than one county, the legislature, or judge of the district court is defeated" in subsection (2) for "is defeated for the office of district judge or an office voted on in more than one (1) county"; redesignated for-

mer subdivision (3)(b) as subsection (4); inserted "certified or" before "registered mail" in two places; substituted subsections (5) and (6) for former subsection (4) which read: "If there is a tie vote, the board making the canvass shall certify the vote to the registrar if the election took place only in one county and to the secretary of state for other elections. The registrar or secretary of state shall proceed as if a petition for recount had been filed under this act. If a tie exists after the recount, the tie shall be resolved as provided by law"; and made minor changes in phraseology, punctuation and style.

DECISIONS UNDER FORMER LAW

Clerk of District Court

The provisions of the constitution, fixing the terms of judicial officers, are exclusive, and vacancies occur by operation of law upon the expiration of the terms designated, even where the people fail to elect their successors; hence, if, by reason of a tie vote, there is a failure to elect the successor of a clerk of a district court upon the expiration of the incumbent's term, there is a vacancy which the county commissioners are authorized to fill by appointment. *State ex rel. Jones v. Foster*, 39 M 583, 592, 104 P 860. See also *State ex rel. Paterson v. Lentz*, 50 M 322, 336, 146 P 932.

If there is a clause in the constitution providing that an officer shall hold for a definite term and until his successor is elected and qualified, and the people fail to elect his successor, there is no vacancy, and he is entitled to hold over until the people have chosen his successor in the usual way; but, in the case of judicial

officers, whose terms end at the expiration of a definitely fixed period, the words "and until his successor is elected and qualified," refer to those officers only who were first elected after the adoption of the constitution; they have no application to those chosen after such first election. *State ex rel. Jones v. Foster*, 39 M 583, 586, 104 P 860.

County School Superintendent

Former chapter governing proceedings on tie vote did not in terms declare that a vacancy in office shall occur when there has been no election to the office by reason of a tie vote. In so far as it related to officers named in the constitution (county school superintendent) and the authority of the county commissioners to fill vacancies therein, it was invalid. *State ex rel. Chenoweth v. Acton*, 31 M 37, 40, 77 P 299. See *State ex rel. Jones v. Foster*, 39 M 583, 591, 104 P 860.

23-4104. Failure to comply with provisions for counting votes, presumption of incorrectness from. If it appears from a verified application that the election judges or clerks failed to comply with the provision of section 23-4003, that is sufficient cause for believing that the election judges and clerks did not correctly ascertain the number of votes cast for the applicant.

History: En. Sec. 193, Ch. 368, L. 1969.

23-4105. Ordering in another judge—court not divested of jurisdiction by failure to hear application within prescribed time. (1) If the judge of the district court of the county in which the election is held is for any reason disqualified from acting, the judge or a supreme court justice shall order another district judge to hear and determine the application.

(2) The district court shall not lose jurisdiction of the case by failure to hear and determine the application within the prescribed time, but shall retain jurisdiction until the cause is finally determined and the final count is made by the board of county canvassers.

History: En. Sec. 194, Ch. 368, L. 1969.

Jurisdiction Retained

The jurisdiction of the district court before which an application for a recount of the votes is filed does not cease when it orders the board to reconvene and re-

canvass the votes, but it retains jurisdiction of the proceeding until completion of the canvass, i. e., until the court is advised thereof. *State ex rel. Riley v. District Court*, 103 M 576, 587, 588, 64 P 2d 115.

23-4106. Limitation of recount to certain precincts. (1) If the application asks for a recount in more than one (1) precinct, but there are not sufficient grounds for a recount in all precincts, the court shall order a recount only in the precincts for which sufficient grounds are stated and shown.

History: En. Sec. 195, Ch. 368, L. 1969.

Compiler's Notes

As enacted, this section contained no subsection (2).

23-4107. Deposit of expense of recount—disposition—compensation of canvassing officials. (1) The court in its order shall determine the probable expense of making the recount and the applicant or applicants asking for the recount shall deposit with the board the amount determined in cash.

(2) If the recount shows that the applicant or applicants have been elected to the office, the deposit of each applicant shall be returned to him.

(3) If the recount shows that an applicant has not been elected and the expense of the recount is greater than the estimated cost, the applicant shall pay the excess, but if the expense is less than the cost the difference shall be refunded to the applicant.

(4) Members of the canvassing board and their clerks shall be compensated for their time spent in canvassing.

History: En. Sec. 196, Ch. 368, L. 1969.

23-4108. Procedure when more than one application for recount made. If more than one (1) candidate makes application for a recount, the court may consider the applications together. The court may make separate or joint orders on the applications and apportion the expenses between the applicants.

History: En. Sec. 197, Ch. 368, L. 1969.

23-4109. Manner of recounting ballots. The board of canvassers in recounting the ballots shall count the votes cast, at the same time, in

the precincts in which a recount is ordered for the several candidates in whose behalf a recount is ordered in the following manner: —

(1) The registrar shall produce, unopened, unless it is necessary for the registrar to open the package or envelope to secure election materials which have been sealed in the wrong envelope or package, the sealed package or envelope received from the election judges of the precinct, or precincts, in which a recount is ordered containing all ballots voted in the precinct or precincts;

(2) A member of the board of county canvassers shall open the sealed package or envelope in the presence of the other members, the registrar, and the applicant or applicants seeking the recount;

(3) A member of the board shall then remove the ballots from the package or envelope in the presence of the applicant or applicants seeking the recount and the candidate or candidates who received the highest number of votes by the first canvass;

(4) One (1) of the members of the board, in the presence and view of the candidates and one (1) other board member, shall read each ballot aloud. As the ballots are read, two (2) clerks shall write the votes cast for each person in each precinct at full length, on previously prepared tally sheets showing the names of the respective candidates, the office or offices for which a recount is made, and the number of each election precinct;

(5) At the completion of the recount, the tally sheets shall be compared, their correctness ascertained, and the total number of votes cast for each candidate determined;

(6) If the recount shows the votes for any applicant are more or less than the number shown upon the official returns, the clerk of the board of canvassers shall correct the original returns to state the number of votes ascertained by the recount;

(7) The board of canvassers shall direct the clerk to enter the result of the election as determined by the recount on the board records and the clerk shall make out and deliver a certificate of election which conforms to the result of the recount.

History: En. Sec. 198, Ch. 368, L. 1969.

23-4110. Service of copy of application on candidate originally found to be elected—hearing. The candidate found to be elected as a result of the original or first canvass shall be served with a copy of the application for recount. He shall be given an opportunity to be heard and shall be permitted to be present and to be represented at any recount ordered.

History: En. Sec. 199, Ch. 368, L. 1969.

23-4111. Sealing recounted ballots. When the recount in a precinct has been finished, the ballots shall again be sealed in the same package or envelope in the presence of the registrar and the members of the board of canvassers and shall be delivered to the registrar for custody.

History: En. Sec. 200, Ch. 368, L. 1969.

23-4112. Certificates of election, effect of recount on. If the recount shows that the person who received the certificate of election according

to section 23-4014 did not receive the highest number of votes, the registrar shall issue a new certificate to the person receiving the highest number pursuant to the recount and the first certificate is void. The person receiving the second certificate shall be elected to the office.

History: En. Sec. 201, Ch. 368, L. 1969.

23-4113. Determining total vote cast for all candidates for an office. When an elector may vote for two (2) or more candidates for the same office, the total vote cast for all candidates for the office is the total vote cast for all candidates divided by the number of candidates officially declared nominated or elected as shown by the official returns.

History: En. Sec. 202, Ch. 368, L. 1969.

23-4114. County recount board, board of county commissioners as—absent and disqualified members—clerk. (1) The county recount board shall always consist of three (3) acting members.

(2) The county recount board is the board of county commissioners.

(3) If one (1) or more of the commissioners cannot attend when the board meets, his place shall be filled by a county officer in the following order of appointment: the treasurer, the assessor, the sheriff, the clerk of court.

(4) If a member of the recount board was a candidate for an office or nomination for which votes are to be recounted, he shall be disqualified.

(5) The registrar is clerk of the recount board, and the board may hire additional clerks as needed.

History: En. Sec. 203, Ch. 368, L. 1969.

23-4115. Meeting of board when recount requested. (1) Immediately upon receiving an application for a recount or notice from the secretary of state that an application has been filed with him, the registrar shall notify the members of the county recount board.

(2) The board shall convene at the usual meeting place of the commissioners without undue delay but not later than five (5) days after receiving notice from the registrar.

History: En. Sec. 204, Ch. 368, L. 1969.

23-4116. Persons entitled to appear at recount—opening and recount of ballots. (1) Each candidate involved in a recount may appear, personally or by a representative, and shall have full opportunity to witness the opening of all ballot boxes and the count of all ballots.

(2) If the recount is upon a referred or submitted question, one (1) qualified elector favoring each side of the question may be present and represent his side.

(3) The registrar shall produce, unopened, the sealed package or envelope received from the election judges in each election precinct in the county.

(4) The recount shall proceed as provided in section 23-4109 and as expeditiously as possible until completed.

History: En. Sec. 205, Ch. 368, L. 1969.

23-4117. Procedure after recount. (1) Immediately after the recount the county recount board shall certify the result.

(2) At least two members of the board shall sign the certificate, and it shall be attested to under seal by the registrar.

(3) The certificate shall set forth in substance the proceedings of the board and appearance of any candidates or representatives, and it shall adequately designate each precinct recounted, the vote of each precinct according to the official canvass previously made, the nomination, position, or question involved, and the correct vote of each precinct as determined by the recount.

(4) When the certificate relates to a recount for a congressional office, a state or district office voted on in more than one county, a legislative office, or an office of judge of the district court or a ballot issue voted on in more than one county, the certificate shall be made in duplicate. One copy shall be transmitted immediately to the secretary of state by certified or registered mail.

(5) (a) If the recount relates to a county or district office voted for in only one county, other than a legislator or a judge of the district court, or a precinct office or a ballot issue voted on in only one county, the county recount board shall immediately recanvass the returns as corrected by the certificate showing the result of the recount and make a corrected abstract of the votes.

(b) If the corrected abstract shows no change in the result, no further action need be taken.

(c) If there is a change in the result, a new certificate of election or nomination shall be issued to each candidate found to be elected or nominated.

History: En. Sec. 206, Ch. 368, L. 1969; amd. Sec. 49, Ch. 365, L. 1977.

Amendments

The 1977 amendment substituted "a congressional office, a state or district office voted on in more than one county, a legislative office, or an office of judge of the district court or a ballot issue voted on in more than one county" in subsection (4) for "an office, nomination, position, or question voted upon in more than one county or for judge of the district court";

inserted "certified or" before "registered mail" at the end of subsection (4); substituted "a county or district office voted for in only one county, other than a legislator or a judge of the district court, or a precinct office or a ballot issue voted on in only one county" in subsection (5)(a) for "an office, nomination, position, or question voted upon in only one county, or part of a single county"; substituted "need" in subsection (5)(b) for "shall"; and made minor changes in phraseology, punctuation and style.

23-4118. Reconvening state board of canvassers—recanvass by state board—corrected abstract of votes—new certificate of election or nomination. (1) When the secretary of state receives certificates from all county recount boards, he shall file them, and fix a time and place as soon as possible for reconvening the state board of canvassers, and shall notify the members.

(2) The state board of canvassers shall recanvass the official returns on the office, nomination, position or question, as corrected by the certificates and make a new and corrected abstract of the votes cast.

(a) If the corrected abstract shows no change in the results, no further action shall be taken.

(b) If there is a change in the results, a new certificate of election or nomination shall be issued in the same manner as the certificate of election or nomination was previously issued to each candidate elected or nominated.

History: En. Sec. 207, Ch. 368, L. 1969.

23-4119. Tie vote after recount. If the recount shows a tie vote and it cannot be determined who has been nominated or elected, the office or position shall be filled as provided by sections 23-4120 and 23-4121.

History: En. Sec. 208, Ch. 368, L. 1969.

23-4120. Procedure upon tie vote for United States representative—supreme court justice—district court judge—legislator. (1) If there is a tie vote for United States representative, the secretary of state shall send a certified statement to the governor showing the votes cast and the governor shall order a special election.

(2) If there is a tie vote for justice of the supreme court, judge of a district court, or member of the legislative assembly the secretary of state shall send a certified statement to the governor showing the vote cast for each person, and the governor shall appoint an eligible person to hold office.

History: En. Sec. 209, Ch. 368, L. 1969.

23-4121. Procedure upon tie vote for state executive officers—county officers other than county commissioner—commissioners. (1) If there is a tie vote for governor and lieutenant governor, secretary of state, attorney general, state auditor, clerk of the supreme court, superintendent of public instruction, or any other state executive officer, the legislature, at its next regular session, shall elect a person to fill the office by joint ballot of the two houses.

(2) If there is a tie vote for clerk of the district court, county attorney, or any county officer, except county commissioner, the commissioners shall appoint an eligible person as in case of other vacancies in the office.

(3) If there is a tie vote for commissioner, the senior district judge shall appoint an eligible person to fill the office as in other cases of vacancy.

(4) If there is a tie vote for state officers, the secretary of state shall transmit a certified copy of the statement to the legislature showing the votes cast for the two or more persons having an equal and the highest number of votes.

History: En. Sec. 210, Ch. 368, L. 1969; amnd. Sec. 50, Ch. 365, L. 1977.

Amendments

The 1977 amendment deleted "state treasurer" after "state auditor" in subsection (1); deleted "or for a township officer" after "commissioner" in subsection (2); and made minor changes in phraseology, punctuation and style.

23-4122. Expenses of recount. The expense of the recount is a county charge. Expenses of the secretary of state and state board of canvassers are a state charge.

History: En. Sec. 211, Ch. 368, L. 1969.

CHAPTER 42

CONTESTS OF BOND ELECTIONS

Section

23-4201. Grounds for challenge.

23-4202. Designation of time and place of hearing—citation—hearing and determination of issues.

23-4201. Grounds for challenge. (1) Any elector qualified to vote in a bond election of a county, city, or of any political subdivision of either may contest a bond election, for any of the following causes:

(a) That the precinct board in conducting the election or in canvassing the returns, made errors sufficient to change the result of the election;

(b) That any official charged with a duty under this act, failed to perform that duty;

(c) That in conducting the election, any official charged with a duty under this act, violated any of the provisions of this act relating to bond elections;

(d) That electors qualified to vote in the election under the provisions of the constitutions of Montana and the United States were not given opportunity to vote in the election;

(e) That electors not qualified to vote in the election under the provisions of the constitutions of Montana and the United States were permitted to vote in the election.

(2) Within sixty (60) days after the election, the contestant shall file a verified petition with the clerk of the court in the judicial district where the election was held.

History: En. Sec. 212, Ch. 368, L. 1969; (d) and (e) to subsection (1); and amd. Sec. 6, Ch. 158, L. 1971. changed the filing time specified in subsection (2) from five days to sixty days after the election.

Amendments

The 1971 amendment added subdivisions

23-4202. Designation of time and place of hearing—citation—hearing and determination of issues. (1) Within five (5) days after the petition is filed, the district judge shall designate the time and place of hearing.

(2) The clerk shall immediately issue a citation for the defendant to appear at the time and place specified in the order, and shall serve the citation immediately upon the defendant either:

(a) Personally, or

(b) If the party cannot be found, by leaving a copy at the house where he last resided.

(3) The court shall meet at the time and place designated to determine the contested election and shall have all the powers necessary to the determination thereof.

(4) The court shall be governed by the rules of law and evidence governing the determination of questions of law and fact, so far as the same may be applicable.

(5) The court shall continue in special session to hear and determine all issues in the contested election. After hearing the proofs and allega-

tions of the parties and within ten (10) days after submission thereof, the court shall file its findings of fact and conclusions of law, and immediately shall pronounce judgment in the premises, either confirming or annulling and setting aside the election. The judgment shall be entered immediately thereafter.

History: En. Sec. 213, Ch. 368, L. 1969.

CHAPTER 43

PRESIDENTIAL ELECTORS

Section

- 23-4301. Election of electors, when chosen and number.
- 23-4302. Nomination of electors—ballot—votes.
- 23-4303. Returns—lists of electors elected.
- 23-4304. Meeting and voting of electors.
- 23-4305. Lists of persons voted for.
- 23-4306. Compensation of electors.
- 23-4307. Vacancy, how filled.

23-4301. Election of electors, when chosen and number. On the Tuesday next after the first Monday of November in the year in which a president of the United States is to be elected there shall be elected as many electors for president and vice-president of the United States as are allocated to this state.

History: En. Sec. 214, Ch. 368, L. 1969.

23-4302. Nomination of electors — ballot — votes. (1) Each political party shall nominate presidential electors for this state and file with the secretary of state certificates of nomination for these candidates at the time and in the manner and number provided by law.

(2) The secretary of state shall certify to the registrars the names of the candidates for president and vice-president of the several political parties, which shall be printed on the ballot.

(3) The names of candidates for electors of president and vice-president shall not be printed upon the ballot.

(4) The votes cast for candidates for president and vice-president of each political party shall be counted for the candidates for presidential electors of the political party whose names have been filed with the secretary of state.

History: En. Sec. 215, Ch. 368, L. 1969.

Nomination for Public Office

The nomination for presidential elec-

tors is a nomination for public office. State ex rel. Wheeler v. Stewart, 71 M 358, 363, 230 P 366.

23-4303. Returns—lists of electors elected. (1) The votes for candidates for president and vice-president shall be given, received, returned and canvassed as the votes are given, returned, and canvassed for candidates for Congress.

(2) The secretary of state shall prepare three (3) lists of names of electors elected and affix the seal of the state to the lists.

(3) The lists shall be signed by the governor and secretary of state and by the latter delivered to the college of electors at the hour of their meeting.

History: En. Sec. 216, Ch. 368, L. 1969.

23-4304. Meeting and voting of electors. (1) The electors shall meet in Helena at 2 p. m. on the first Monday after the second Wednesday in December following their election.

(2) The electors shall vote by separate ballots for one (1) person for president and one (1) for vice-president of the United States.

History: En. Sec. 217, Ch. 368, L. 1969.

Extension of Time Unconstitutional

Since, under prior section and the federal act (U.S.C., Tit. 3, sec. 5, enacted pursuant to section 1, article II of the federal constitution), the presidential electors must meet on the first Monday after the second Wednesday in December follow-

ing their election, the legislature could not, by enacting ch. 101, Laws 1943 (since repealed), constitutionally extend the time for depositing military ballots for the general election for seven weeks beyond the Tuesday after the first Monday in November. *Maddox v. Board of State Canvassers*, 116 M 217, 224, 149 P 2d 112.

23-4305. Lists of persons voted for. (1) The electors shall make lists of the persons voted for as president and vice-president, indicate the number of votes for each, certify, seal, and transmit the lists as prescribed by laws of the United States.

History: En. Sec. 218, Ch. 368, L. 1969.

Compiler's Notes

As enacted, this section contained no subsection (2).

23-4306. Compensation of electors. Electors shall receive the same pay and mileage allowed members of the legislative assembly. Payments shall be certified by the secretary of state and paid by the state auditor from the state general fund.

History: En. Sec. 219, Ch. 368, L. 1969.

23-4307. Vacancy, how filled. If a vacancy occurs, the electors present shall elect a citizen of the state to fill the vacancy.

History: En. Sec. 220, Ch. 368, L. 1969.

CHAPTER 44

MEMBERS OF CONGRESS—ELECTIONS AND VACANCIES

Section

- 23-4401. Election of United States senators and representatives.
- 23-4402. Vacancy in office of United States senator.
- 23-4403. Certificates issued by governor.
- 23-4405. Vacancy in the office of United States representative.

23-4401. Election of United States senators and representatives. (1) United States senators and representatives shall be elected at the general election preceding commencement of the term to be filled.

(2) Nominations and elections shall be as provided by law for governor.

History: En. Sec. 221, Ch. 368, L. 1969;

Amendments

amd. Sec. 51, Ch. 365, L. 1977.

The 1977 amendment deleted a subsec-

tion (2) which read "If a vacancy occurs for senator, or United States representative, an election to fill the vacancy shall be held at the next general election. If an election is invalid or not held at that

time, the election shall be at the second succeeding general election"; and redesignated former subsection (3) as subsection (2).

23-4402. Vacancy in office of United States senator. (1) If a vacancy occurs in the office of United States senator, an election to fill the vacancy shall be held at the next general election. If the election is invalid or not held at that time, the election to fill the vacancy shall be held at the next succeeding general election.

(2) The governor may make a temporary appointment to fill the vacancy until the election.

History: En. Sec. 222, Ch. 368, L. 1969; amd. Sec. 52, Ch. 365, L. 1977.

Amendments

The 1977 amendment deleted "or representative" after "senator" in the first sentence of subsection (1); substituted "an

election to fill the vacancy shall be held at the next general election" in subsection (1) for "the governor shall issue a writ of election to fill the vacancy"; added the second sentence to subsection (1); and made minor changes in style.

23-4403. Certificates issued by governor. Upon receipt of the statement required by section 23-4016, the governor shall send a certificate of election to each person elected.

History: En. Sec. 223, Ch. 368, L. 1969.

23-4404. Repealed.

Repeal

Section 23-4404 (Sec. 224, Ch. 368, L. 1969), relating to residence requirements

of congressmen, was repealed by Sec. 76, Ch. 365, Laws 1977.

23-4405. Vacancy in the office of United States representative. (1) Whenever a vacancy occurs in the office of United States representative, the governor shall immediately issue a writ of election to fill the vacancy.

(2) The election to fill the vacancy shall be held within 3 months from the time the vacancy occurs.

History: En. 23-4405 by Sec. 53, Ch. 365, L. 1977.

CHAPTER 45

NONPARTISAN NOMINATION AND ELECTION OF GOVERNOR

Section

- 23-4501. Judicial offices as separate and independent offices for election purposes.
- 23-4502. Nominations.
- 23-4503. Declarations for nomination—contents—fee.
- 23-4504. Register of candidates for nomination—arrangement and certification of candidates' names—separate from party designation.
- 23-4505. Primary ballots—preparation and distribution.
- 23-4506. Judicial primary ballots.
- 23-4507. Separate counting and canvassing of judicial ballots—application of general laws.
- 23-4508. Nominations—placing names on ballots.
- 23-4509. Tie vote, how decided.

23-4510. Vacancies among nominees after nomination and before general election, how filled.

23-4510.1. Form of ballot on retention of incumbent supreme court justice.

23-4510.2. Form of ballot on retention of incumbent district court judge.

23-4501. Judicial offices as separate and independent offices for election purposes. (1) Each vacancy for associate justice of the supreme court is a separate and independent office for election purposes. The chief justice of the supreme court shall assign an individual number to the four (4) associate justices and certify these numbers to the office of the secretary of state not less than one hundred eighty (180) days before a primary nominating election.

(2) Each judicial office in a district which has more than one (1) district judge is a separate and independent office for election purposes.

History: En. Sec. 225, Ch. 368, L. 1969.

Purpose and Construction of Act

Purpose of prior act was to eliminate, so far as possible, the selection of judges from partisan politics. The word "candi-

date" as used in act was not to receive a different construction from that as used in the general primary law. The act was to be construed in pari materia with the primary and general election laws. State ex rel. McHale v. Ayers, 111 M 1, 3, 105 P 2d 686.

23-4502. Nominations. Candidates for the supreme court or district court shall be nominated according to primary election laws so far as they are consistent with the provisions of this chapter.

History: En. Sec. 226, Ch. 368, L. 1969.

23-4503. Declarations for nomination — contents — fee. (1) Judicial candidates shall file declarations for nomination as required by the primary election laws in a form specified by the secretary of state.

(2) Declarations for nomination as associate justice of the supreme court shall designate the number of the office. A person can make only one (1) designation.

(3) Candidates for nomination as district judge in a district having more than one (1) judge shall specify the number of the office. His candidacy is limited to the number specified.

(4) Declarations shall not indicate political affiliation. The candidate shall not state in his declaration any principles or measures he advocates nor any slogans.

(5) Each person filing a declaration shall remit the fee prescribed by law for the position he seeks. Declarations for justice of the supreme court and district court judge shall be filed with the secretary of state.

History: En. Sec. 227, Ch. 368, L. 1969.

23-4504. Register of candidates for nomination—arrangement and certification of candidates' names—separate from party designation. (1) On receipt of a declaration, the secretary of state shall make entries in the "Register of Candidates for Nomination" on a page different from entries made for district candidates of political parties.

(2) The secretary of state shall separately arrange, certify, and file the names of judicial candidates, and certify to each registrar the names

to be placed on the primary ballot at the same time, and in the same way, that other candidates are certified.

(3) The certificates shall show the names of candidates and number of the judicial office for each. The list shall be separate from lists of candidates appearing under political headings.

History: En. Sec. 228, Ch. 368, L. 1969.

23-4505. Primary ballots—preparation and distribution. (1) The registrars shall arrange, prepare, and distribute primary ballots for judicial offices designated "Judicial Primary Ballots." They shall be arranged as other primary ballots and be without political designation.

(2) The number of judicial primary ballots and sample ballots furnished shall be the same as other primary ballots.

History: En. Sec. 229, Ch. 368, L. 1969.

DECISIONS UNDER FORMER LAW

Write-in Candidate

The prior Nonpartisan Judiciary Act did not restrict electors to the privilege of voting only for candidates whose names appeared on the primary judicial ballot,

but, though the act was silent as to their right to write in the name of a qualified person to judicial office, they could do so. *State ex rel. McHale v. Ayers*, 111 M 1, 3, 105 P 2d 686.

23-4506. Judicial primary ballots. (1) The "Judicial Primary Ballot" shall be furnished to electors in the same manner as other primary ballots.

(2) The number of the judicial primary ballot shall correspond to the number of the elector's regular ballot.

(3) Different terms of office for the same position shall be considered separate offices.

History: En. Sec. 230, Ch. 368, L. 1969.

23-4507. Separate counting and canvassing of judicial ballots—application of general laws. (1) After closing the polls, the election officers shall separately count and canvass judicial ballots, and record and certify them, showing the number of votes cast for each person.

(2) Judicial ballots, stubs, and unused ballots shall be disposed of in the same manner as other ballots, stubs and unused ballots. Returns shall be made as provided by law.

History: En. Sec. 231, Ch. 368, L. 1969.

23-4508. Nominations—placing names on ballots. (1) Candidates for nomination equal to twice the number to be elected at the general election who shall receive the highest number of votes cast at the primary, or if the number of candidates is not more than twice the number to be elected then all candidates, are nominees for the office.

(2) Candidates who received the highest vote in the primary shall have their names printed on the official ballot for the general election.

(3) No candidate shall have his name on the judicial ballot for the general election unless he was a successful candidate at the primary election.

History: En. Sec. 232, Ch. 368, L. 1969.

23-4509. Tie vote, how decided. (1) In case of a tie vote, the candidates shall appear and cast lots before the secretary of state on the fifth day after the vote is officially canvassed.

(2) If a candidate fails to appear in person or by proxy in writing before 12 noon of the day appointed, the secretary of state shall by lot determine the candidate whose name will be printed on the official ballot.

History: En. Sec. 233, Ch. 368, L. 1969.

23-4510. Vacancies among nominees after nomination and before general election, how filled. (1) If after the primary a candidate is not able to run for the office for any reason, the vacancy shall be filled by the candidate next in rank in number of votes received in the primary election.

(2) If after the primary and before the general election there is no person able or entitled to the office or there are not enough candidates to fill the offices, the governor shall certify to the secretary of state the names of persons qualified for the office equal to twice the number to be elected. The names of those persons nominated by the governor shall be printed on the official ballot.

(3) Nominations made by the governor are not filed too late if filed within ten (10) days after the vacancy occurs. If the ballots have already been printed, stickers may be used to place the names on the ballot.

History: En. Sec. 234, Ch. 368, L. 1969.

23-4510.1. Form of ballot on retention of incumbent supreme court justice. In the event there is no candidate for the office of supreme court justice or chief justice other than the incumbent, the name of the incumbent shall be placed on the official ballot for the general election as follows:

Shall (chief) justice (here the name of the incumbent justice is inserted) of the supreme court of the state of Montana be retained in office for another term?

☐ YES

☐ NO

(Mark an "x" before the word "YES" if you wish the justice to remain in office. Mark an "x" before the word "NO" if you do not wish the justice to remain in office.)

History: En. Sec. 1, Ch. 22, L. 1973.

Title of Act

An act placing the name of the supreme

court justices and district court judges on the ballot in uncontested elections to comply with article VII, section 8(2) of the 1972 Montana constitution.

23-4510.2 ELECTIONS

Constitutionality VII, § 8 of the 1972 Montana Constitution.
This section and 23-4510.2 are in conformity with the provisions of Article Keller v. Smith, — M —, 553 P 2d 1002.

23-4510.2. Form of ballot on retention of incumbent district court judge.
In the event there is no candidate for the office of district court judge in a judicial district of the state other than the incumbent, the name of the incumbent shall be placed on the official ballot for the general election as follows:

Shall judge (here the name of the incumbent judge of the district court is inserted) of the district court of the judicial district of the state of Montana be retained in office for another term in office?

☐ YES

☐ NO

(Mark an "x" before the word "YES" if you wish the judge to remain in office. Mark an "x" before the word "NO" if you do not wish the judge to remain in office.)

History: En. Sec. 2, Ch. 22, L. 1973.
Constitutionality formity with the provisions of Article VII, § 8 of the 1972 Montana Constitution.
This section and 23-4510.1 are in conformity with the provisions of Article Keller v. Smith, — M —, 553 P 2d 1002.

23-4511. Repealed.

Repeal ments of judicial candidates, was repealed
Section 23-4511 (Sec. 235, Ch. 368, L. 1969), relating to political party endorsement by Sec. 49, Ch. 334, Laws 1977.

CHAPTER 46

CONVENTIONS TO RATIFY AMENDMENTS TO CONSTITUTION
OF THE UNITED STATES

- Section
- 23-4601. Convention for ratification of amendments to United States constitution.
 - 23-4602. Delegates to constitutional convention.
 - 23-4603. Nomination of delegates.
 - 23-4604. Determination of election results.
 - 23-4605. Ballot form.
 - 23-4606. Time for convention of delegates.
 - 23-4607. Quorum—officers—procedure—qualifications.
 - 23-4608. Compensation of delegates and officers.
 - 23-4609. Certificate of result—transmission to secretary of state of United States.
 - 23-4610. Qualifications of petitioners and electors.
 - 23-4611. Federal acts to supersede state provisions concerning amendments.

23-4601. Convention for ratification of amendments to United States constitution. If Congress proposes an amendment to the constitution of the United States to be ratified by state convention, a convention shall be held.

History: En. Sec. 236, Ch. 368, L. 1969.

23-4602. Delegates to constitutional convention. (1) The number of convention delegates shall be equal to the number of members in the legislative assembly. Each district shall have delegates equal to the number of members it is entitled to in the legislative assembly.

(2) Delegates shall be elected at the next primary or general election after Congress has proposed the amendment, or at a special election called by the governor.

(3) Except as otherwise provided in sections 23-4601 through 23-4611, the election shall be in accordance with the laws for the election of members of the legislative assembly.

History: En. Sec. 237, Ch. 368, L. 1969.

23-4603. Nomination of delegates. (1) Nominations for the office of delegate shall be by petition signed by not less than one hundred (100) voters of the district.

(2) Nominations shall be without political designation but shall be as "in favor of" or "opposed to" ratification of the proposed amendment.

(3) Petitions and acceptances shall be filed not less than thirty (30) days prior to the election.

History: En. Sec. 238, Ch. 368, L. 1969.

23-4604. Determination of election results. The results of the election are determined as follows:

(1) The votes cast for each candidate "in favor of" ratification, and the total votes cast for all candidates "in favor of" ratification and the votes cast for each candidate "opposed to" and the total votes cast for all candidates "opposed to" ratification shall be ascertained;

(2) Candidates receiving the highest number of votes equal to the number of delegates to be elected from the side receiving the greater number of votes are elected.

History: En. Sec. 239, Ch. 368, L. 1969.

23-4605. Ballot form. The official ballot form shall be prescribed by the secretary of state.

History: En. Sec. 240, Ch. 368, L. 1969.

23-4606. Time for convention of delegates. Delegates shall meet at the state capitol on the first Monday in the month following the election at 10 a. m. and constitute a convention to act upon the proposed amendment.

History: En. Sec. 241, Ch. 368, L. 1969.

23-4607. Quorum—officers—procedure—qualifications. A majority of the total number of delegates constitutes a quorum. The convention may choose a president, secretary, and other necessary officers; make rules

governing the procedure of the convention; and shall judge the qualifications and election of its members.

History: En. Sec. 243, Ch. 368, L. 1969.

23-4608. Compensation of delegates and officers. Each delegate shall receive mileage and per diem as provided by law for members of the legislative assembly. The secretary and other officers shall receive compensation fixed by the convention.

History: En. Sec. 242, Ch. 368, L. 1969.

23-4609. Certificate of result—transmission to secretary of state of United States. When the convention has agreed by majority vote of delegates attending the convention, a certificate of the result shall be executed by the president and secretary and transmitted to the secretary of state of the United States.

History: En. Sec. 244, Ch. 368, L. 1969.

23-4610. Qualifications of petitioners and electors. Persons entitled to petition for nomination and vote at the election are determined by laws on registration.

History: En. Sec. 245, Ch. 368, L. 1969.

23-4611. Federal acts to supersede state provisions concerning amendments. If Congress prescribes how the convention shall be constituted and held by resolution or statute, sections 23-4601 through 23-4610 are inoperative and the convention shall be constituted and held as Congress directs. All state officers are directed to take action to constitute the convention as authorized by Congress and act as if acting under state statute.

History: En. Sec. 246, Ch. 368, L. 1969.

Repealing Clause

Section 248 of Ch. 368, Laws 1969 read "Sections 23-101 through 23-106, 23-201 through 23-202, 23-301 through 23-311, 23-401 through 23-407, 23-501, 23-501.1, 23-502 through 23-534, 23-601 through 23-604, 23-604.1, 23-604.2, 23-605 through 23-612, 23-701 through 23-713, 23-801 through 23-820, 23-901 through 23-929, 23-931, 23-933 through 23-936, 23-1001, 23-1008 through 23-1009, 23-1101 through 23-1107, 23-1109 through 23-1117, 23-1201 through

23-1228, 23-1301, 23-1302(1), 23-1302(2), 23-1303, 23-1303.1, 23-1304 through 23-1321, 23-1401 through 23-1406, 23-1501 through 23-1503, 23-1601 through 23-1608, 23-1608A, 23-1609 through 23-1618, 23-1701 through 23-1715, 23-1801 through 23-1808, 23-1812 through 23-1819, 23-1901 through 23-1904, 23-2001 through 23-2012, 23-2014, 23-2101 through 23-2111, 23-2201 through 23-2206, 23-2301 through 23-2323, 23-2401 through 23-2411, and 23-2501 through 23-2507, R. C. M. 1947 are repealed."

CHAPTER 47

ELECTION FRAUDS AND OFFENSES—CORRUPT PRACTICES ACT

Section

- 23-4737. Payments in name of undisclosed principal.
- 23-4744. Contributions from corporations, public utilities and others.
- 23-4746. Challenging voters—procedure.
- 23-4757. Forfeiture of nomination or office for violation of law, when not worked.
- 23-4758. Punishment.
- 23-4759. Time for commencing contest.

ELECTION FRAUDS AND OFFENSES

- 23-4760. Court having jurisdiction of proceedings.
- 23-4762. Declaration of result of election after rejection of illegal votes.
- 23-4763. Grounds for contest of nomination or office.
- 23-4764. Nomination or election not to be vacated, when.
- 23-4765. Reception of illegal votes, allegations and evidence.
- 23-4766. Contents of contest petition—amendment—bond—costs—citation—precedence.
- 23-4767. Hearing of contest.
- 23-4770. Advancement of cases—dismissal—privileges of witnesses.
- 23-4771. Form of complaint.
- 23-4776. Statement of purpose.
- 23-4777. Definitions.
- 23-4778. Reports of contributions and expenditures required.
- 23-4779. What reports must disclose.
- 23-4780. Reports must be certified as true and correct.
- 23-4781. Campaign treasurer and campaign depository—exception for certain school districts.
- 23-4782. Deposit of contributions—statement of campaign treasurer.
- 23-4783. Treasurer to keep records—inspections.
- 23-4784. Petty cash funds allowed.
- 23-4785. Creation of office.
- 23-4786. Powers and duties of the commissioner.
- 23-4787. Inspection of statements and issuance of orders of noncompliance.
- 23-4788. Consultation and cooperation with county attorney.
- 23-4789. Right to inspect current accounts and reports.
- 23-4790. Duties of county clerk and recorder.
- 23-4791. Names not to be printed on ballot.
- 23-4792. Certificates of election may be withheld.
- 23-4794. Secretary of state to furnish copies of certain election laws to appropriate officials.
- 23-4795. Limitation on contributions.
- 23-4796. Commissioner of campaign finances and practices.
- 23-47-101. Election code not to supersede criminal code—statute of limitations.
- 23-47-102. Trivial benefits not covered by criminal provisions.
- 23-47-103. Violations as misdemeanor.
- 23-47-104. Attempt as violation.
- 23-47-105. Aiding and abetting.
- 23-47-106. Ineligibility to hold office because of conviction.
- 23-47-107. Voiding election.
- 23-47-108. Powers of district court.
- 23-47-109. Electors and ballots.
- 23-47-110. Conduct of officers and clerks of election.
- 23-47-111. Interference with officials.
- 23-47-112. Official misconduct.
- 23-47-113. Tampering with election records and information.
- 23-47-114. Injury to election equipment, materials, and records.
- 23-47-115. Deceptive election practices.
- 23-47-116. Deceiving an elector.
- 23-47-117. Fraudulent registration.
- 23-47-118. Limits on voting rights.
- 23-47-119. Electioneering.
- 23-47-120. Betting on elections.
- 23-47-121. Preventing public meetings of electors.
- 23-47-122. Illegal influence of voters.
- 23-47-123. Illegal consideration for voting.
- 23-47-124. Illegal assistance to naturalized citizens.
- 23-47-125. Officers and clerks not to influence voter.
- 23-47-126. Coercion or undue influence of voters.
- 23-47-127. Demands and requests of candidates.
- 23-47-128. Bribing members of political gatherings.
- 23-47-129. Improper nominations.
- 23-47-130. Providing money for bribery or corrupt practices.
- 23-47-131. Illegal contributions.
- 23-47-132. Publications in newspapers and periodicals.
- 23-47-133. Election materials not to be anonymous.
- 23-47-134. Unlawful acts of employers and employees.
- 23-47-135. Prohibition of salary increase contribution.

- 23-47-136. Proceedings against corporations.
 23-47-137. Transfer of convention credential.
 23-47-138. Unlawful for political party to endorse judicial candidate.
 23-47-139. Prohibition on certain public officers from acting as delegates or members of political committees.

23-4701 to 23-4721. (10747 to 10767) Repealed.

Repeal

Sections 23-4701 to 23-4721 (Secs. 60 to 80, Pen. C. 1895; Sec. 29, Ch. 513, L. 1973;

Sec. 20, Ch. 480, L. 1975), relating to election frauds and offenses, were repealed by Sec. 49, Ch. 334, Laws 1977.

23-4722. (10768) Repealed.

Repeal

Section 23-4722 (Sec. 81, Pen. C. 1895; Sec. 8145, Rev. C. 1907; Sec. 10768, R. C. M. 1921; Sec. 94-1422, R. C. M. 1947; redes.

23-4722 by Sec. 29, Ch. 513, L. 1973), relating to the penalty for violation of the election laws, was repealed by Sec. 23, Ch. 480, Laws 1975.

23-4723, 23-4724. (10769, 10770) Repealed.

Repeal

Sections 23-4723, 23-4724 (Secs. 105, 109, Pen. C. 1895; Sec. 29, Ch. 513, L. 1973;

Sec. 3, Ch. 188, L. 1975), relating to election frauds and offenses, were repealed by Sec. 49, Ch. 334, Laws 1977.

23-4725, 23-4726. (10771, 10772) Repealed.

Repeal

Sections 23-4725, 23-4726 (Secs. 110, 111, Pen. C. 1895; Secs. 8174, 8175, Rev. C. 1907; Secs. 10771, 10772, R. C. M. 1921; Secs. 94-1425, 94-1426, R. C. M. 1947;

redes. 23-4725, 23-4726 by Sec. 29, Ch. 513, L. 1973), relating to the disposition of election offense fines, and the voiding of corrupt elections, were repealed by Sec. 23, Ch. 480, Laws 1975.

23-4727, 23-4728. (10773, 10774) Repealed.

Repeal

Sections 23-4727, 23-4728 (Secs. 1, 8, Init. Act, Nov. 1912; Sec. 29, Ch. 513, L. 1973; Secs. 13, 14, Ch. 535, L. 1975), relat-

ing to limitations on campaign expenditures, were repealed by Sec. 2, Ch. 481, Laws 1975.

23-4728.1. Repealed.

Repeal

Section 23-4728.1 (Sec. 1, Ch. 217, L. 1974), relating to the filing of an organizational statement as a prerequisite to

an expenditure of funds by a political committee, was repealed by Sec. 23, Ch. 480, Laws 1975.

23-4729 to 23-4731. (10775 to 10777) Repealed.

Repeal

Sections 23-4729 to 23-4731 (Secs. 10 to 12, Init. Act, Nov. 1912; Secs. 10775 to 10777, R. C. M. 1921; Secs. 94-1429 to 94-1431, R. C. M. 1947; Sec. 1, Ch. 41, L. 1969; Secs. 1, 2, Ch. 144, L. 1973; redes.

23-4729 to 23-4731 by Sec. 29, Ch. 513, L. 1975), relating to definition of terms, candidates' financial statements, and expenditure statements by political committees and other persons, were repealed by Sec. 23, Ch. 480, Laws 1975.

23-4732. (10778) Repealed.

Repeal

Section 23-4732 (Sec. 13, Init. Act, Nov. 1912; Sec. 29, Ch. 513, L. 1973), relating

to furnishing copies of act to public officials, was repealed by Sec. 49, Ch. 334, Laws 1977.

23-4733 to 23-4736. (10779 to 10782) Repealed.**Repeal**

Sections 23-4733 to 23-4736 (Secs. 14 to 17, Init. Act, Nov. 1912; Secs. 10779 to 10782, R. C. M. 1921; Sec. 1, Ch. 41, L. 1943; Secs. 94-1433 to 94-1436, R. C. M. 1947; Sec. 1, Ch. 251, L. 1971; redes. 23-

4733 to 23-4736 by Sec. 29, Ch. 513, L. 1973), relating to inspection of accounts, prosecution for failure to file a statement, jurisdiction of violations, and preservation of statement records, were repealed by Sec. 23, Ch. 480, Laws 1975.

23-4737. (10783) Payments in name of undisclosed principal. No person may make a payment of his own money or of another person's money to any other person in connection with a nomination or election in any other name than that of the person who in truth supplies such money. No person may knowingly receive such payment or enter or cause the same to be entered in his accounts or records in another name than that of the person by whom it was actually furnished; provided, if the money is received from the treasurer of any political committee, it is sufficient to enter the same as received from the treasurer.

History: En. Sec. 18, Init. Act, Nov. 1912; re-en. Sec. 10783, R. C. M. 1921; Sec. 94-1437, R. C. M. 1947; redes. 23-4737 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 54, Ch. 365, L. 1977.

Amendments

The 1977 amendment substituted "committee" in the last sentence for "organization"; and made minor changes in phraseology and punctuation.

23-4738. (10784) Repealed.**Repeal**

Section 23-4738 (Sec. 19, Init. Act, Nov. 1912; Sec. 29, Ch. 513, L. 1973), relating

to campaign promises, was repealed by Sec. 49, Ch. 334, Laws 1977.

23-4739. (10785) Repealed.**Repeal**

Section 23-4739 (En. Sec. 20, Init. Act, Nov. 1912; Sec. 10785, R. C. M. 1921; Sec. 94-1439, R. C. M. 1947; redes. 23-4739 by

Sec. 29, Ch. 513, L. 1973), relating to prohibition against campaign contributions by public officers or employees, was repealed by Sec. 6, Ch. 188, Laws 1975.

23-4740 to 23-4743. (10786 to 10789) Repealed.**Repeal**

Sections 23-4740 to 23-4743 (Secs. 21 to 24, Init. Act, Nov. 1912; Sec. 29, Ch. 513,

L. 1973), relating to election frauds and offenses, were repealed by Sec. 49, Ch. 334, Laws 1977.

23-4744. (10790) Contributions from corporations, public utilities and others. No corporation, bank, savings bank, co-operative bank, savings and loan association, trust, surety, indemnity, safe deposit, insurance, railroad, street railway, telegraph, telephone, gas, electric light, heat, power, canal, aqueduct, water, cemetery or crematory company, or any company having the right to take or condemn land, or to exercise franchises in public ways granted by the state or by any county, city, or town, shall pay or contribute in order to aid, promote, or prevent the nomination or election of any person, or in order to aid or promote the interests, success, or defeat of any political party, organization, or ballot issue. No person shall solicit or receive such payment or contribution from such corporation.

History: En. Sec. 25, Init. Act, Nov. 1912; re-en. Sec. 10790, R. C. M. 1921; Sec. 94-1444, R. C. M. 1947; redes. 23-4744 by

Sec. 29, Ch. 513, L. 1973; amd. Sec. 1, Ch. 296, L. 1975.

Amendments

The 1975 amendment deleted "and no person, trustee, or trustees owning or holding the majority of the stock of a corporation carrying on the business of a" after "no corporation" at the beginning of the section; inserted "savings and loan association" near the beginning of the section; deleted "trustee" between "trust" and "surety" near the beginning of the section; added "or ballot issue" to the end of the first sentence; deleted "or such holders of a majority of such stock" from the end of the second sentence; and made minor changes in punctuation.

Unconstitutional

The 1975 amendment to this section prohibiting payments or contributions by corporations or banks in support or opposition of ballot issues violated the first amendment guarantee of freedom of speech and was unconstitutional as applied to power generating companies which sought to oppose a referendum measure dealing with amendments to the Montana Major Facility Siting Act, § 70-801 et seq. *C & C Plywood Corp. v. Hanson*, 420 F Supp 1254.

23-4744.1. Repealed.**Repeal**

Section 23-4744.1 (Sec. 2, Ch. 296, L. 1975), relating to salary increases to be

used as political contributions, was repealed by Sec. 49, Ch. 334, Laws 1977.

23-4745. (10791) Repealed.**Repeal**

Section 23-4745 (Sec. 26, Init. Act, Nov. 1912; Sec. 29, Ch. 513, L. 1973), relating

to influencing vote by gifts, was repealed by Sec. 49, Ch. 334, Laws 1977.

23-4746. (10792) Challenging voters—procedure. (1) Whenever any person's right to vote at a primary election is challenged and he has taken the oath prescribed by the statutes, then a clerk of election shall write in the pollbooks at the end of the person's name the words "challenged and sworn", with the name of the challenger. Thereupon an election judge shall write upon the back of the ballot offered by the challenged voter the number of his ballot, in order that the ballot may be identified in any future contest of the results of the election and be cast out if it appears to the court to have been for any reason wrongfully or illegally voted for any candidate or on any question.

(2) This marking of the name of the challenged voter and the testimony of any judge or clerk of election in reference thereto or in reference to the manner in which the challenged person voted, if the testimony is given in the course of any contest, investigation, or trial wherein the legality of the vote of such person is questioned for any reason, is not a violation of subsections (2) or (4) of 23-47-110.

History: En. Sec. 27, Init. Act, Nov. 1912; re-en. Sec. 10792, R. C. M. 1921; Sec. 94-1446, R. C. M. 1947; redes. 23-4746 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 45, Ch. 334, L. 1977.

Amendments

The 1977 amendment inserted the subsection designations; inserted "at a primary election" near the beginning of sub-

section (1); deleted "and if it is at a nominating election" after "statutes" in the first sentence of subsection (1); substituted "an election judge" in the second sentence of subsection (1) for "the chairman of the board of judges"; substituted "subsections (2) or (4) of 23-47-110" at the end of subsection (2) for "section 23-4707"; and made minor changes in phraseology and punctuation.

23-4747 to 23-4749. (10793 to 10795) Repealed.**Repeal**

Sections 23-4747 to 23-4749 (Secs. 28 to

30, Init. Act. No. 1912; Sec. 29, Ch. 513, L. 1973), relating to coercion of voters,

betting on elections, and personating another elector, were repealed by Sec. 49, Ch. 334, Laws 1977.

23-4750. (10796) Repealed.

Repeal

Section 23-4750 (Sec. 31, Init. Act, Nov. 1912; Sec. 10796, R. C. M. 1921; Sec. 94-1450, R. C. M. 1947; redes. 23-4750 by Sec.

29, Ch. 513, L. 1973), relating to the definition of corrupt practice, was repealed by Sec. 23, Ch. 480, Laws 1975.

23-4751 to 23-4754. (10797 to 10800) Repealed.

Repeal

Sections 23-4751 to 23-4754 (Secs. 32 to 35, Init. Act, Nov. 1912; Sec. 29, Ch. 513, L. 1973; Sec. 1, Ch. 247, L. 1975), relating

to compensating voters, publications, solicitation of votes, and political criminal libel, were repealed by Sec. 49, Ch. 334, Laws 1977.

23-4755. (10801) Repealed.

Repeal

Section 23-4755 (Sec. 36, Init. Act, Nov. 1912; Sec. 10801, R. C. M. 1921; Sec. 94-1455, R. C. M. 1947; redes. 23-4755 by

Sec. 29, Ch. 513, L. 1975), relating to the filing of statements of expenses by candidates, was repealed by Sec. 23, Ch. 480, Laws 1975.

23-4756. (10802) Repealed.

Repeal

Section 23-4756 (Sec. 37, Init. Act, Nov. 1912; Sec. 29, Ch. 513, L. 1973), relating

to inducements to accept or decline nominations, was repealed by Sec. 49, Ch. 334, Laws 1977.

23-4757. (10803) Forfeiture of nomination or office for violation of law, when not worked. If, upon the trial of any action or proceeding under the provisions of Title 23 or Title 37 to contest the right of any person to be declared nominated or elected to any office or to annul or set aside such nomination or election or to remove a person from his office, it appears from the evidence that the offense complained of was not committed by the candidate or with his knowledge or consent or was committed without his sanction or connivance and that all reasonable means for preventing the commission of such offense at such election were taken by and on behalf of the candidate; that the offense or offenses complained of were trivial, unimportant, and limited in character and that in all other respects his participation in the election was free from such offenses or illegal acts; or that any act or omission of the candidate arose from inadvertence or from accidental miscalculation or from some other reasonable cause of a like nature and in any case did not arise from any want of good faith; and under the circumstances it seems to the court to be unjust that the candidate forfeit his nomination or office or be deprived of any office of which he is the incumbent, then the nomination or election of the candidate is not by reason of such offense or omission complained of void, nor may the candidate be removed from or deprived of his office.

History: En. Sec. 38, Init. Act, Nov. 1912; re-en. Sec. 10803, R. C. M. 1921; Sec. 94-1457, R. C. M. 1947; redes. 23-4757 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 55, Ch. 365, L. 1977.

Amendments

The 1977 amendment substituted "Title 23 or Title 37" near the beginning of the section for "this act"; and made minor changes in phraseology and punctuation.

23-4758. (10804) Punishment. If, upon the trial of any action or proceeding under the provisions of Title 23 or Title 37 to contest the right of any person to be declared to be nominated to an office or elected to an office or to annul and set aside such election or to remove any person from his office, it appears that such person was guilty of any corrupt practice, illegal act, or undue influence, in or about such nomination or election, he shall be punished by being deprived of the nomination or office, as the case may be, and the vacancy therein shall be filled in the manner provided by law. The only exceptions to this judgment shall be those provided in 23-4757. Such judgment does not prevent the candidate or officer from being proceeded against by indictment or criminal information for any such act or acts.

History: En. Sec. 39, Init. Act, Nov. 1912; re-en. Sec. 10804, R. C. M. 1921; Sec. 94-1458, R. C. M. 1947; redes. 23-4758 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 56, Ch. 365, L. 1977.

Amendments

The 1977 amendment substituted "Title 23 or Title 37" near the beginning of the first sentence for "this act"; and made minor changes in phraseology and punctuation.

23-4759. (10805) Time for commencing contest. Any action to contest the right of any person to be declared elected to an office or to annul and set aside such election or to remove from or deprive any person of an office of which he is the incumbent, for any offense mentioned in Title 23 or Title 37, must, unless a different time be stated, be commenced within 1 year after the return day of the election at which such offense was committed.

History: En. Sec. 40, Init. Act, Nov. 1912; re-en. Sec. 10805, R. C. M. 1921; Sec. 94-1459, R. C. M. 1947; redes. 23-4759 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 57, Ch. 365, L. 1977.

Amendments

The 1977 amendment substituted "Title 23 or Title 37" for "this act"; substituted "1 year" for "forty days"; deleted "unless the ground of the action or proceeding is for the illegal payment of money or other valuable thing subsequent to the filing of the statements prescribed by this act, in

which case the action or proceeding may be commenced within forty days after the discovery by the complainant of such illegal payment" from the end of the section; deleted a former second sentence which read: "A contest of the nomination or office of governor or representative or senator in congress must be commenced within twenty days after the declaration of the result of the election, but this shall not be construed to apply to any contest before the legislative assembly"; and made minor changes in phraseology and punctuation.

23-4760. (10806) Court having jurisdiction of proceedings. An application for filing a statement, payment of a claim, or correction of an error or false recital in a filed statement or an action or proceeding to annul and set aside the election of any person declared elected to an office or to remove or deprive any person of his office for an offense mentioned in Title 23 or Title 37 or any petition to excuse any person or candidate in accordance with the power of the court to excuse, as provided in 23-4757, must be made or filed in the district court of the county in which the certificate of his nomination as a candidate for the office to which he is declared nominated or elected is filed or in which the incumbent resides.

History: En. Sec. 41, Init. Act, Nov. 1912; re-en. Sec. 10806, R. C. M. 1921; Sec. 94-1460, R. C. M. 1947; amd. and redes. 23-4760 by Sec. 25, Ch. 513, L. 1973; amd. Sec. 58, Ch. 365, L. 1977.

Amendments

The 1973 amendment renumbered this section; and substituted the reference to section 23-4757 for a reference to section 94-1457.

The 1977 amendment substituted "Title 23 or Title 37" near the middle of the section for "this act"; and made minor changes in phraseology and punctuation.

23-4761. (10808) Repealed.**Repeal**

Section 23-4761 (Sec. 43, Init. Act, Nov. 1912; Sec. 10808, R. C. M. 1921; Sec. 94-1462, R. C. M. 1947; redes. 23-4761 by Sec.

29, Ch. 513, L. 1973), relating to the county attorney's duty with respect to violations, was repealed by Sec. 23, Ch. 480, Laws 1975.

23-4762. (10809) Declaration of result of election after rejection of illegal votes. If, in any case of a contest on the ground of illegal votes, it appears that another person than the one returned has the highest number of legal votes, after the illegal votes have been eliminated, the court must declare such person nominated or elected, as the case may be.

History: En. Sec. 44, Init. Act, Nov. 1912; re-en. Sec. 10809, R. C. M. 1921; Sec. 94-1463, R. C. M. 1947; redes. 23-4762 by Sec. 29, Ch. 513, L. 1973.

23-4763. (10810) Grounds for contest of nomination or office. An elector of the state or of any political or municipal division thereof may contest the right of any person to any nomination or office for which the elector has the right to vote, for any of the following causes:

- (1) on the ground of a deliberate, serious, and material violation of any provision of the law relating to nominations or elections;
- (2) whenever the person whose right is contested was not, at the time of the election, eligible to such office;
- (3) on account of illegal votes or an erroneous or fraudulent count or canvass of votes.

History: En. Sec. 45, Init. Act, Nov. 1912; re-en. Sec. 10810, R. C. M. 1921; Sec. 94-1464, R. C. M. 1947; redes. 23-4763 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 59, Ch. 365, L. 1977.

Amendments

The 1977 amendment made minor changes in style, phraseology and punctuation.

23-4764. (10811) Nomination or election not to be vacated, when. Nothing in the third ground of contest specified in the preceding section is to be so construed as to authorize a nomination or election to be set aside on account of illegal votes, unless it appear, either that the candidate or nominee whose right is contested had knowledge of or connived at such illegal votes, or that the number of illegal votes given to the person whose right to the nomination or office is contested, if taken from him, would reduce the number of his legal votes below the number of votes given to some other person for the same nomination or office, after deducting therefrom the illegal votes which may be shown to have been given to such other person.

History: En. Sec. 46, Init. Act, Nov. 1912; re-en. Sec. 10811, R. C. M. 1921; Sec. 94-1465, R. C. M. 1947; redes. 23-4764 by Sec. 29, Ch. 513, L. 1973.

23-4765. (10812) Reception of illegal votes, allegations and evidence. When the reception of illegal votes is alleged as a cause of contest, it shall be sufficient to state generally that in one or more specified voting precincts

illegal votes were given to the person whose nomination or election is contested, which, if taken from him, will reduce the number of his legal votes below the number of legal votes given to some other person for the same office; but no testimony shall be received of any illegal votes, unless the party contesting such election deliver to the opposite party, at least three days before such trial, a written list of the number of illegal votes, and by whom given, which he intends to prove on such trial. This provision shall not prevent the contestant from offering evidence of illegal votes not included in such statement, if he did not know and by reasonable diligence was unable to learn of such additional illegal votes, and by whom they were given, before delivering such written list.

History: En. Sec. 47, Init. Act, Nov. 94-1466, R. C. M. 1947; redes. 23-4765 by 1912; re-en. Sec. 10812, R. C. M. 1921; Sec. Sec. 29, Ch. 513, L. 1973.

23-4766. (10813) Contents of contest petition—amendment—bond—costs—citation—precedence. Any petition contesting the right of any person to a nomination or election shall set forth the name of every person whose election is contested, and the grounds of the contest, and shall not thereafter be amended, except by leave of the court. Before any proceeding thereon the petitioner shall give bond to the state in such sum as the court may order, not exceeding two thousand dollars, with not less than two sureties, who shall justify in the manner required of sureties on bailbonds, conditioned to pay all costs, disbursements, and attorney's fees that may be awarded against him if he shall not prevail. If the petitioner prevails, he may recover his costs, disbursements, and reasonable attorney's fees against the contestee. But costs, disbursements, and attorney's fees, in all such cases, shall be in the discretion of the court, and in case judgment is rendered against the petitioner, it shall also be rendered against the sureties on the bond. On the filing of any such petition, the clerk shall immediately notify the judge of the court, and issue a citation to the person whose nomination or office is contested, citing them to appear and answer, not less than three nor more than seven days after the date of filing the petition, and the court shall hear said cause, and every such contest shall take precedence over all other business on the court docket, and shall be tried and disposed of with all convenient dispatch. The court shall always be deemed in session for the trial of such cases.

History: En. Sec. 48, Init. Act, Nov. 94-1467, R. C. M. 1947; redes. 23-4766 by 1912; re-en. Sec. 10813, R. C. M. 1921; Sec. Sec. 29, Ch. 513, L. 1973.

23-4767. (10814) Hearing of contest. The petitioner (contestant) and the contestee may appear and produce evidence at the hearing, but no person other than the petitioner and contestee may be made a party to the proceedings on such petition; and no person other than the parties and their attorneys may be heard thereon, except by order of the court. If more than one petition is pending or the election of more than one person is contested, the court may, in its discretion, order the cases to be heard together and may apportion the costs, disbursements, and attorney's fees between them and shall finally determine all questions of law and fact, save only that the judge may, in his discretion, impanel a jury to decide on questions of fact. In the case of nominations or elections, other than

for federal congressional offices, the court shall immediately certify its decision to the board or official issuing certificates of nomination or election, and the board or official shall thereupon issue certificates of nomination or election to the person or persons entitled thereto by the court's decision. If judgment of ouster against a defendant is rendered, the nomination or office shall be by the judgment declared vacant, except as provided in 23-4762, and shall thereupon be filled by a new election or by appointment as may be provided by law regarding vacancies in such nomination or office.

History: En. Sec. 49, Init. Act, Nov. 1912; re-en. Sec. 10814, R. C. M. 1921; Sec. 94-1468, R. C. M. 1947; reded. 23-4767 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 60, Ch. 365, L. 1977.

Amendments

The 1977 amendment inserted "other than for federal congressional offices" near the beginning of the present third sentence; deleted "said judgment shall award the nomination or office to the person receiving next the highest number of votes, unless it shall be further determined in

the action, upon appropriate pleading and proof by the defendant, that some act has been done or committed which would have been ground in a similar action against such person, had he received the highest number of votes for such nomination or office, for a judgment of ouster against him; and if it shall be so determined at the trial" after "rendered" in the last sentence; inserted "except as provided in 23-4762" in the last sentence; and made minor changes in phraseology and punctuation.

23-4768. (10815) Repealed.

Repeal

Section 23-4768 (Sec. 50, Init. Act, Nov. 1912; Sec. 29, Ch. 513, L. 1973), relating

to proceedings against corporations for violations of act, was repealed by Sec. 49, Ch. 334, Laws 1977.

23-4769. (10816) Repealed.

Repeal

Section 23-4769 (Sec. 51, Init. Act, Nov. 1912; Sec. 10816, R. C. M. 1921; Sec. 94-1470, R. C. M. 1947; reded. 23-4769 by

Sec. 29, Ch. 513, L. 1973), relating to the penalty for violations where not otherwise provided, was repealed by Sec. 23, Ch. 480, Laws 1975.

23-4770. (10817) Advancement of cases—dismissal—privileges of witnesses. Proceedings under Title 23 or Title 37 shall be advanced on the docket upon request of either party for speedy trial, but the court may postpone or continue the trial if necessary, and in case of such continuance or postponement, the court may impose costs in its discretion as a condition thereof. No petition may be dismissed without the consent of the county attorney, unless the same is dismissed by the court. No person may be excused from testifying or producing papers or documents on the ground that his testimony or the production of papers or documents will tend to criminate him; but no admission, evidence, or paper made or advanced or produced by such person or any evidence that is the direct result of such evidence or information that he may have so given may be offered or used against him in any civil or criminal prosecution, except in a prosecution for perjury committed in such testimony.

History: En. Sec. 52, Init. Act, Nov. 1912; re-en. Sec. 10817, R. C. M. 1921; Sec. 94-1471, R. C. M. 1947; reded. 23-4770 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 61, Ch. 365, L. 1977.

Amendments

The 1977 amendment substituted "Title 23 or Title 37" in the first sentence for "this act"; substituted "necessary" in the first sentence for "the ends of justice may be thereby more effectually secured"; and made minor changes in phraseology.

23-4771. (10818) Form of complaint. A petition or complaint filed under the provisions of this act shall be sufficient if it is substantially in the following form:

In the District Court of the
Judicial District,
 for the County of....., State of Montana.

A B (or A B and C D), Contestants,

vs.

E F, Contestee.

The petition of contestant (or contestants) above named alleges:

That an election was held (in the state, district, county, or city of.....), on the.....day of....., A. D. 19....., for the (nomination of a candidate for) (or election of a) (state the office).

That and were candidates at said election, and the board of canvassers has returned the said..... as being duly nominated (or elected) at said election.

That contestant A B voted (or had a right to vote, as the case may be) at said election (or claims to have had a right to be returned as the nominee or officer elected or nominated at said election, or was a candidate at said election, as the case may be), and said contestant C D (here state in like manner the right of each contestant).

And said contestant (or contestants) further allege (here state the facts and grounds on which the contestants rely).

Wherefore, your contestants pray that it may be determined by the court that said was not duly nominated (or elected), and that said election was void (or that the said A B or C D, as the case may be) was duly nominated (or elected), and for such other and further relief as to the court may seem just and legal in the premises.

Said complaint shall be verified by the affidavit of one of the petitioners in the manner required by law for the verification of complaints in civil cases.

History: En. Sec. 53, Init. Act, Nov. 1912; re-en. Sec. 10818, R. C. M. 1921; Sec. 94-1472, R. C. M. 1947; redes. 23-4771 by Sec. 29, Ch. 513, L. 1973.

23-4772. (10819) Repealed.

Repeal

Section 23-4772 (Sec. 54, Init. Act, Nov. 1912; Sec. 10819, R. C. M. 1921; Sec. 94-1473, R. C. M. 1947; redes. 23-4772 by

Sec. 29, Ch. 513, L. 1973), relating to the form of the statement of expenses, was repealed by Sec. 23, Ch. 480, Laws 1975.

23-4773. (10820) Repealed.

Repeal

Section 23-4773 (Sec. 55, Init. Act, Nov. 1912; Sec. 29, Ch. 513, L. 1973), relating

to false oaths or affidavits, was repealed by Sec. 49, Ch. 334, Laws 1977.

23-4774. Repealed.

Repeal

Section 23-4774 (Sec. 1, Ch. 74, L. 1951; Sec. 94-1475, R. C. M. 1947; redes. 23-4774 by Sec. 29, Ch. 513, L. 1973), relating to a

requirement that political literature contain the name of the publisher or producer, was repealed by Sec. 2, Ch. 247, Laws 1975.

23-4775. Repealed.**Repeal**

Section 23-4775 (Sec. 2, Ch. 74, L. 1951; Sec. 94-1476, R. C. M. 1947; redes. 23-4775 by Sec. 29, Ch. 513, L. 1973), relating to

violation of the political literature disclosure requirement as a misdemeanor, was repealed by Sec. 23, Ch. 480, Laws 1975.

23-4776. Statement of purpose. It is the purpose of this act to establish clear and consistent requirements for the full disclosure and reporting of the sources and disposition of funds used in Montana to support or oppose candidates, political committees, or issues, and to consolidate and clarify the authority to enforce the election and campaign finance laws as specified in Title 23, R. C. M. 1947.

History: En. 23-4776 by Sec. 1, Ch. 480, L. 1975.

Title of Act

An act revising political campaign reporting requirements; creating the position of commissioner of campaign finances and practices; authorizing the commissioner, in conjunction with the county attorneys, to enforce Montana's election laws and to regulate Montana's campaign finance laws as specified in Title 23, R. C. M. 1947; specifying the powers and

duties of county attorneys and other local officials; requiring candidates and political committees to designate a campaign treasurer and a campaign depository; authorizing the creation of a petty cash fund for all candidates and political committees; providing civil and criminal penalties; amending section 23-4701; repealing sections 23-4722, 23-4725, 23-4726, 23-4728.1, 23-4729, 23-4730, 23-4731, 23-4733, 23-4734, 23-4735, 23-4736, 23-4750, 23-4755, 23-4761, 23-4769, 23-4772, and 23-4775; and providing for an effective date.

23-4777. Definitions. As used in Title 23 and Title 37, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Candidate" means an individual who has filed a declaration of nomination, certificate of nomination, or acceptance of nomination for public office as required by law, but does not include a candidate for national office who is subject to the provisions of federal election campaign laws.

(2) "Election" means a general, special, or primary election held to choose a public officer or submit an issue for the approval or rejection of the people.

(3) "Issue" or "ballot issue" means a proposal submitted to the people at an election for their approval or rejection including, but not limited to, initiatives, referenda, proposed constitutional amendments, recall questions, school levy questions, bond issue questions, or a ballot question.

(4) "Public office" means a state, county, municipal, school, or other district office that is filled by the people at an election.

(5) "Contribution" means:

(a) an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to influence an election;

(b) a transfer of funds between political committees;

(c) the payment by a person other than a candidate or political committee of compensation for the personal services of another person that are rendered to a candidate or political committee; but

(d) not services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee or meals and lodging provided by individuals in their private residence for a candidate or other individual.

(6) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value made for the purpose of influencing the results of an election, but "expenditure" does not mean:

(a) services, food, or lodging provided in a manner that they are not contributions under subsection (5); or

(b) payments by a candidate for his personal travel expenses or for food, clothing, lodging, or personal necessities for himself and his family.

(7) "Anything of value" means any goods that have a certain utility to the recipient that is real and that ordinarily is not given away free but is purchased.

(8) "Political committee" means a combination of two or more individuals, or a person other than an individual, the primary or incidental purpose of which is to support or oppose a candidate or issue or to influence the result of an election by any expenditure.

(9) "Individual" means a human being.

(10) "Person" means an individual, corporation, association, firm, partnership, cooperative, committee, club, union, or other organization or group of individuals or a candidate as defined in subsection (1) of this section.

History: En. 23-4777 by Sec. 2, Ch. 480, L. 1975; amd. Sec. 2, Ch. 365, L. 1977.

Amendments

The 1977 amendment substituted the introductory phrase for "As used in Title 23, chapter 47, R. C. M. 1947"; deleted former subdivision (2) which read: "Com-

missioner' means the commissioner of campaign finances and practices as described in section 23-4785"; redesignated subdivisions (3) through (11) as subdivisions (2) through (10); substituted "subsection (5)" in subdivision (6)(a) for "this act"; and made minor changes in phraseology.

23-4778. Reports of contributions and expenditures required. (1) Except as provided in subsection (5), each candidate and political committee shall file periodic reports of contributions and expenditures made by or on the behalf of a candidate or political committee. All reports required by this section shall be filed with the commissioner and with the county clerk and recorder of the county in which a candidate is a resident or the political committee has its headquarters. However, where residency within a district, county, city, or town is not a prerequisite for being a candidate, copies of all reports shall be filed with the county clerk and recorder of the county in which the election is to be held, or if the election is to be held in more than one county, with the clerk and recorder in the county that the commissioner shall specify.

(2) In lieu of all contribution and expenditure reports required by this act, the commissioner shall accept copies of the reports filed by candidates for congress and president of the United States, and their political committees, pursuant to the requirements of federal law.

(3) Candidates for a state office filled by a statewide vote of all the voters of Montana, the political committees for such candidates, and political committees organized to support or oppose a statewide issue, shall file reports:

(a) on the tenth day of March and September, in each year that an election is to be held, and on the fifteenth and fifth days next preceding the

date on which an election is held, and within twenty-four (24) hours after receiving a contribution of five hundred dollars (\$500) or more at any time after the last pre-election report;

(b) not more than twenty (20) days after the date of the election;

(c) on the tenth day of March and September of each year following an election so long as there is an unexpended balance or an expenditure deficit in a campaign account; and

(d) whenever a candidate or political committee finally closes its books.

(4) Candidates for a state district office, including but not limited to, candidates for the legislature, public service commission, or district court judge, their political committees, and political committees organized to support or oppose district issues, shall file reports:

(a) on the tenth day next preceding the date on which an election is held, and within twenty-four (24) hours after receiving a contribution of one hundred dollars (\$100) or more at any time after the last pre-election report;

(b) not more than twenty (20) days after the date of the election;

(c) whenever a candidate or political committee finally closes its books.

(5) Candidates for any other public office, their political committees, and political committees organized to support or oppose local issues, shall be required to file the reports specified in subsection (4) only if the total amount of contributions received or the total amount of funds expended for an election, excluding the filing fee paid by the candidate, exceed five hundred dollars (\$500); except candidates for the office of trustee of a school district, their political committees, and political committees organized to support or oppose a school district issue shall not be required to comply with the provisions of this section when the school district is:

(a) a first-class district located in a county having a population less than 15,000;

(b) a second- or third-class district; or

(c) a county high school district having a student enrollment less than 2,000.

(6) All reports required by this section shall be complete as of the date prescribed by the commissioner, which shall not be less than five (5) or more than ten (10) days before the date of filing as specified in subsections (2) through (5) of this section.

(7) The commissioner shall adopt rules and regulations that will permit political committees, including political parties, to file copies of a single comprehensive report when they support or oppose more than one candidate or issue.

(8) Reports filed under this section shall be filed to cover the following time periods:

(a) the initial report shall cover all contributions received or expenditures made by a candidate or political committee prior to the time that a person became a candidate as defined in subsection (1) of section 23-4777 until the date prescribed by the commissioner for the filing of the appro-

priate initial report pursuant to subsections (2) through (5) of this section;

(b) subsequent periodic reports shall cover the period of time from the closing of the previous report to a date prescribed by the commissioner, which shall not be less than five (5) days or more than ten (10) days before the date of filing;

(c) final reports shall cover the period of time from the last periodic report to the final closing of the books of the candidate or political committee.

History: En. 23-4778 by Sec. 3, Ch. 480, L. 1975; amd. Sec. 1, Ch. 23, L. 1977.

Amendments

The 1977 amendment inserted "Except as provided in subsection (5)" at the

beginning of subsection (1); added the clause excepting school district trustee candidates from filing reports at the end of the first sentence of subsection (5); added subdivisions (5)(a) through (5)(c); and made a minor change in style.

23-4779. What reports must disclose. Each report required by this act shall disclose the following information, except that a candidate shall only be required to report the information specified in this section if the transactions involved were undertaken for the purpose of influencing an election:

(1) the amount of cash on hand at the beginning of the reporting period;

(2) the full name and mailing address (occupation and the principal place of business, if any) of each person who has made aggregate contributions, other than loans, of twenty-five dollars (\$25) or more to the candidate or political committee (including the purchase of tickets for events such as dinners, luncheons, rallies, and similar fund-raising events) within the reporting period together with the aggregate amount of those contributions, and the total amount of contributions made by that person;

(3) the total sum of individual contributions made to or for the political committee or candidate and not reported under subsection (2) of this section;

(4) the name and address of each political committee or candidate from which the reporting committee or candidate received any transfer of funds together with the amount and dates of all those transfers;

(5) each loan from any person during the reporting period together with the full names and mailing addresses (occupation and principal place of business, if any) of the lender and endorsers, if any, and the date and amount of each loan;

(6) the amount and nature of debts and obligations owed to a political committee or candidates in the form prescribed by the commissioner;

(7) an itemized account of proceeds from:

(a) the sale of tickets to each dinner, luncheon, rally, and other fund-raising events;

(b) mass collections made at such an event; and

(c) sales of items such as political campaign pins, buttons, badges, flags, emblems, hats, banners, literature, and similar materials;

(8) each contribution, rebate, refund, or other receipt not otherwise listed under subsections (2) through (6) of this section during the reporting period;

(9) the total sum of all receipts received by or for the committee or candidate during the reporting period;

(10) the full name and mailing address (occupation and the principal place of business, if any) of each person to whom expenditures have been made by the committee or candidate during the reporting period, including the amount, date, and purpose of each expenditure and the total amount of expenditures made to each person;

(11) the full name and mailing addresses (occupation and the principal place of business, if any) of each person to whom an expenditure for personal services, salaries, and reimbursed expenses have been made, including the amount, date, and purpose of that expenditure and the total amount of expenditures made to each person;

(12) the total sum of expenditures made by a political committee or candidate during the reporting period;

(13) the name and address of each political committee or candidate to which the reporting committee or candidate made any transfer of funds together with the amount and dates of all those transfers;

(14) the name of any person to whom a loan was made during the reporting period, including the full name and mailing address (occupation and principal place of business, if any) of that person, and the full name and mailing address (occupation and principal place of business, if any) of the endorers, if any, and the date and amount of each loan;

(15) the amount and nature of debts and obligations owed by a political committee or candidate in the form prescribed by the commissioner;

(16) other information that may be required by the commissioner to fully disclose the sources and disposition of funds used to support or oppose candidates or issues.

History: En. 23-4779 by Sec. 4, Ch. 480,
L. 1975.

23-4780. Reports must be certified as true and correct. (1) A report required by this act to be filed by a candidate or political committee shall be verified as true and correct by the oath or affirmation of the individual filing the report. The individual filing the report shall be the candidate or an officer of a political committee who is on file as an officer of the committee with the commissioner. The oath or affirmation shall be made before an officer authorized to administer oaths.

(2) A copy of a report or statement shall be preserved by the individual filing it for a period of time to be designated by the commissioner.

(3) The commissioner may promulgate rules and regulations regarding the extent to which organizations that are not primarily political committees, but are incidentally political committees shall report their politically related activities in accordance with this act.

History: En. 23-4780 by Sec. 5, Ch. 480,
L. 1975.

23-4781. Campaign treasurer and campaign depository—exception for certain school districts. (1) Except as provided in subsection (7), each candidate for nomination or election to office and each political committee shall appoint one (1) campaign treasurer. No contribution shall be received or expenditure made by or on behalf of a candidate or political committee until the candidate or political committee appoints a campaign treasurer and certifies the name and address of the campaign treasurer pursuant to this section. The certification, which shall include an organizational statement, properly acknowledged by a notary public, and setting forth of the name and address of the campaign treasurer and all other officers, if any, of the political committee, shall be filed with the commissioner and the appropriate county clerk and recorder as specified for the filing of reports in section 23-4778.

(2) A campaign treasurer may appoint deputy campaign treasurers, but not more than one (1) in each county in which the campaign is conducted. Each candidate and political committee shall certify the full name and complete address of the campaign treasurer and all deputy campaign treasurers with the office with whom the candidate or the political committee is required to file reports.

(3) Any campaign or deputy campaign treasurer appointed pursuant to this section shall be a registered voter in this state. An individual may be appointed and serve as a campaign treasurer of a candidate and a political committee or two (2) or more candidates and political committees. A candidate may appoint himself as his own campaign or deputy campaign treasurer. No individual may serve as a campaign or deputy campaign treasurer or perform any duty required of a campaign or deputy campaign treasurer of a candidate or political committee until he has been designated and his name certified by the candidate or political committee.

(4) Deputy campaign treasurers may exercise any of the powers and duties of a campaign treasurer as set forth in this act when specifically authorized in writing to do so by the campaign treasurer and the candidate in the case of a candidate, or the campaign treasurer and the chairman of the political committee in the case of a political committee.

(5) A candidate or political committee may remove his or its campaign or deputy campaign treasurer. The removal of any treasurer or deputy treasurer shall immediately be reported to the officer with whom the name of the campaign treasurer was originally filed. In case of death, resignation, or removal of his or its campaign treasurer before compliance with any obligation of a campaign treasurer under this act, the candidate or political committee shall appoint a successor and certify the name and address of the successor as specified in subsection (1) of this section.

(6) Except as provided in subsection (7), each candidate and each political committee shall designate one (1) primary campaign depository for the purpose of depositing all contributions received and disbursing all expenditures made by the candidate or political committee. The candidate or political committee may also designate one (1) secondary depository in each county in which an election is held and in which the candidate or committee participates. Deputy campaign treasurers may make deposits in

and make expenditures from secondary depositories when authorized to do so as provided in subsection (4) of this section. Only a bank authorized to transact business in Montana may be designated as a campaign depository. The candidate or political committee shall file the name and address of each primary and secondary depository so designated at the same time and with the same officer with whom the candidate or committee files the name of his or its campaign treasurer pursuant to subsection (1) of this section. Nothing in this subsection shall prevent a political committee or candidate from having more than one campaign account in the same depository.

(7) The provisions of this section do not apply to candidates for the office of trustee of a school district, their political committees, and political committees organized to support or oppose a school district issue when the school district is:

(a) a first-class district located in a county having a population less than 15,000;

(b) a second- or third-class district; or

(c) a county high school district having a student enrollment less than 2,000.

History: En. 23-4781 by Sec. 6, Ch. 480, L. 1975; amd. Sec. 2, Ch. 23, L. 1977.

Effective Date

Section 3 of Ch. 23, Laws 1977 provided the act should be in effect upon its passage and approval. Approved March 8, 1977.

Amendments

The 1977 amendment inserted "Except as provided in subsection (7)" at the beginning of subsections (1) and (6); and added subsection (7).

23-4782. Deposit of contributions—statement of campaign treasurer. All funds received by the campaign treasurer or any deputy campaign treasurer of any candidate or political committee shall be deposited prior to the end of the fifth business day following their receipt (Sundays and holidays excluded) in a checking account in a campaign depository designated pursuant to section 23-4781. A statement showing the amount received from or provided by each person and the account in which the funds are deposited shall be prepared by the campaign treasurer at the time the deposit is made. This statement along with the receipt form for cash contributions deposited at the same time and a deposit slip for the deposit shall be kept by the treasurer as a part of his records.

History: En. 23-4782 by Sec. 7, Ch. 480, L. 1975.

23-4783. Treasurer to keep records—inspections. (1) The campaign treasurer of each candidate and each political committee shall keep detailed accounts, current within not more than ten (10) days after the date of receiving a contribution or making an expenditure, of all contributions received and all expenditures made by or on behalf of the candidate or political committee that are required to be set forth in a statement filed under this act.

(2) Accounts kept by the campaign treasurer of a candidate or politi-

cal committee may be inspected under reasonable circumstances before, during, or after the election to which the accounts refer by the campaign treasurer of any opposing candidate or political committee in the same electoral district. The right of inspection may be enforced by appropriate writ issued by any court of competent jurisdiction. The campaign treasurers of political committees supporting a candidate may be joined with the campaign treasurer of the candidate as respondents in such a proceeding.

(3) Accounts kept by a campaign treasurer of a candidate shall be preserved by the campaign treasurer for a period coinciding with the term of office for which the person was a candidate.

History: En. 23-4783 by Sec. 8, Ch. 480,
L. 1975.

DECISIONS UNDER FORMER LAW

Bipartisan Organizations

Bipartisan organization to promote the sales tax referred measure was legislative in nature and not political within the meaning of former law requiring access

to books of "any political party, committee, or organization." State ex rel. Nybo v. District Court, 158 M 429, 492 P 2d 1395.

23-4784. Petty cash funds allowed. (1) The campaign treasurer for each candidate or political committee is authorized to withdraw the following amount each week from the primary depository for the purpose of providing a petty cash fund for the candidate or political committee:

(a) for all candidates for nomination or election on a statewide basis and all political committees operating on a statewide basis, one hundred dollars (\$100) per week; and

(b) for all other candidates and political committees, twenty dollars (\$20) per week.

(2) The petty cash fund may be spent for office supplies, transportation expenses, and other necessities in an amount of less than ten dollars (\$10). Petty cash shall not be used for the purchase of time, space, or services from any communications medium.

History: En. 23-4784 by Sec. 9, Ch. 480,
L. 1975.

23-4785. Creation of office. (1) There is a commissioner of campaign finances and practices, who is appointed by a majority of a four-member selection committee which is comprised of the speaker of the house, the president of the senate, and the minority floor leaders of both houses of the legislature. However, if a majority of the members of the selection committee cannot agree upon the selection of a commissioner within 30 days after a vacancy occurs or a term expires, the Montana supreme court shall appoint a fifth public member to the selection committee. The majority of the five members of the selection committee shall then select the commissioner.

(2) The individual selected to serve as the commissioner of campaign finances and practices is appointed for a 5-year term, but he is thereafter ineligible to serve as the commissioner of campaign finances and practices

and is precluded from being a candidate for public office as defined in this act for a period of 5 years from the time that his term as commissioner expires.

(3) If for any reason a vacancy occurs in the position of commissioner, a successor shall be appointed within 30 days as provided in subsection (1) to serve out the unexpired term. An individual who is selected to serve out the unexpired term of a preceding commissioner is entitled to be reappointed for a 5-year term as provided in subsection (1).

(4) The commissioner may be removed from office by impeachment as provided in 95-2801 and 95-2802. He may also be prosecuted by the appropriate county attorney for official misconduct as specified in 94-7-401.

(5) The commissioner of campaign finances and practices is entitled to receive an annual salary of \$21,000. The salary commission may recommend salary increases to the legislature.

(6) The office of the commissioner is attached to the office of the secretary of state for administrative purposes only, as specified in 82A-108, except that the provisions of subsections (1)(b), (1)(c), (2)(a), (2)(b), (2)(d), (2)(e), and (3)(a) of 82A-108 do not apply.

History: En. 23-4785 by Sec. 10, Ch. 480, L. 1975; amd. Sec. 62, Ch. 365, L. 1977; amd. Sec. 1, Ch. 461, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 365 and once by Ch. 461. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 365, Laws of 1977, substituted "after a vacancy occurs or a term expires" near the middle of the second sentence of subsection (1) for "after the passage and approval of this act"; and made minor changes in phraseology, punctuation and style.

Chapter 461, Laws of 1977, substituted "after a vacancy occurs" in the middle of the second sentence of subsection (1) for "after the passage and approval of this act"; and made minor changes in phraseology, punctuation and style.

23-4786. Powers and duties of the commissioner. (1) The commissioner of campaign finances and practices shall be responsible for investigating all of the alleged violations of the election laws contained in Title 23 or Title 37 and shall in conjunction with the county attorneys be responsible for enforcing all of the state's election laws.

(2) The commissioner shall select an appropriate staff to enforce the provisions of Title 23 and Title 37, and he may hire and fire all personnel under his supervision.

(3) The commissioner may hire or retain attorneys who are properly licensed to practice before the supreme court of the state of Montana to prosecute violations of Title 23 or Title 37. Any properly licensed attorney so retained or hired shall exercise the powers of a special attorney general, and he may prosecute, subject to the control and supervision of the commissioner and the provisions of 23-4788, any criminal or civil action arising out of a violation of any provision of Title 23 or Title 37. All prosecutions shall be brought in the state district court for the county in which a violation has occurred or in the district court for Lewis and Clark County.

The authority to prosecute as prescribed by this section includes the authority to:

(a) institute proceedings for the arrest of persons charged with or reasonably suspected of criminal violations of Title 23 or Title 37;

(b) attend and give advice to a grand jury when cases involving criminal violations of Title 23 or Title 37 are presented;

(c) draw and file indictments, informations, and criminal complaints;

(d) prosecute all actions for the recovery of debts, fines, penalties, or forfeitures accruing to the state or county from persons convicted of violating Title 23 or Title 37; and

(e) do any other act necessary to successfully prosecute a violation of any provision of Title 23 or Title 37.

(4) The commissioner shall prescribe forms for statements and other information required to be filed pursuant to Title 23 or Title 37 and furnish forms and appropriate information to persons required to file statements and information.

(5) The commissioner shall prepare and publish a manual prescribing a uniform system for accounts for use by persons required to file statements pursuant to Title 23 or Title 37.

(6) The commissioner shall accept and file any information voluntarily supplied that exceeds the requirements of Title 23 or Title 37.

(7) The commissioner shall prescribe the manner in which the county clerks and recorders shall receive, file, collate, and maintain reports filed with them under Title 23 or Title 37.

(8) The commissioner shall make statements and other information filed with his office available for public inspection and copying during regular office hours and make copying facilities available free of charge or at a charge not to exceed actual cost.

(9) The commissioner shall preserve statements and other information filed with his office for a period of 10 years from date of receipt.

(10) The commissioner shall prepare and publish summaries of the statements received.

(11) The commissioner shall prepare and publish such other reports as he considers appropriate.

(12) The commissioner shall provide for wide public dissemination of summaries and reports.

(13) The commissioner may investigate all statements filed pursuant to the provisions of Title 23 or Title 37 and shall also investigate alleged failures to file any statement or the alleged falsification of any statement filed pursuant to the provisions of Title 23 or Title 37. Upon the submission of a written complaint by any individual, the commissioner shall also investigate any other alleged violation of the provisions of Title 23 or Title 37 or any rule adopted pursuant thereto.

(14) The commissioner shall promulgate and publish rules to carry out the provisions of Title 23 or Title 37 and shall promulgate such rules in conformance with the Montana Administrative Procedure Act.

(15) The commissioner shall at the close of each fiscal year report to the legislature and the governor concerning the action he has taken, including the names, salaries, and duties of all individuals in his employ and the money he has disbursed. The commissioner shall also make further reports on the matters within his jurisdiction as the legislature may prescribe and shall also make recommendations for further legislation as may appear desirable.

(16) The commissioner shall be responsible for preparing, administering, and allocating the budget for his office.

(17) The commissioner may inspect any records, accounts, or books that must be kept pursuant to the provisions of Title 23 or Title 37, which are held by any political committee or candidate so long as such inspection is made during reasonable office hours.

(18) The commissioner may issue orders of noncompliance as prescribed by 23-4787.

(19) The commissioner may exercise all of the powers conferred upon him by law in any jurisdiction or political subdivision of the state.

(20) After receiving the final campaign contribution and expenditure report filed as required by Title 23, the commissioner shall inform the secretary of state or the city or county clerk and recorder that each candidate who has been properly elected to any public office has filed his final contribution and expenditure report as specified in 23-4778.

(21) The commissioner may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, bank account statements of a political committee or candidate, or other records which are relevant or material for the purpose of conducting any investigation pursuant to the provisions of Title 23 or Title 37.

History: En. 23-4786 by Sec. 11, Ch. 480, L. 1975; amd. Sec. 63, Ch. 365, L. 1977.

Amendments

The 1977 amendment inserted "or Title 37" throughout the section; and made minor changes in phraseology, punctuation and style.

23-4787. Inspection of statements and issuance of orders of noncompliance. (1) Each statement filed with the commissioner during an election or within 60 days thereafter shall be inspected within 10 days after the date upon which the statement is filed. If a person has not satisfied the provisions of Title 23 or Title 37, the commissioner shall immediately notify the person of the noncompliance. Such an order of noncompliance shall be issued when:

(a) upon examination of the official ballot, it appears that the person has failed to file a statement as required by law or that a statement filed by a person does not conform to law; or

(b) it is determined that a statement filed with the commissioner does not conform to the requirements of Title 23 or Title 37, or that a person has failed to file a statement required by law.

(2) If an order of noncompliance is issued during a campaign period or within 60 days after an election, a candidate or political committee

shall submit the necessary information within 5 days after receiving the notice of noncompliance. Upon a failure to submit the required information within the time specified, the appropriate county attorney or the commissioner may initiate a civil or criminal action pursuant to the procedures outlined in 23-4788.

(3) If an order of noncompliance is issued during any other period than that described in subsection (2), a candidate or political committee shall submit the necessary information within 10 days after receiving the notice of noncompliance. Upon a failure to submit the required information within the time specified, the appropriate county attorney or the commissioner shall initiate a civil or criminal action pursuant to the procedures outlined in 23-4788.

(4) A candidate or political treasurer aggrieved by the issuance of an order of noncompliance may seek judicial review in the district court of the county in which the candidate resides or the county in which the political committee has its headquarters. All petitions for judicial review filed pursuant to this section shall be expeditiously reviewed by the appropriate district court.

(5) Within 120 days after the date of each election, the commissioner shall examine and compare each statement or report filed with the commissioner pursuant to the provisions of Title 23 or Title 37 to determine whether a statement or report conforms to the provisions of the law. The examination shall include a comparison of all reports and statements received by the commissioner pursuant to the requirements of Title 23 or Title 37. The commissioner may investigate the source and authenticity of any contribution or expenditure listed in any report or statement filed pursuant to Title 23 or Title 37 or the alleged failure to report any contribution or expenditure required to be reported pursuant to Title 23 or Title 37.

History: En. 23-4787 by Sec. 12, Ch. 480, L. 1975; amd. Sec. 64, Ch. 365, L. 1977.

Amendments

The 1977 amendment inserted "or Title

37" throughout the section; substituted "this section" in the last sentence of subsection (4) for "this act"; and made minor changes in phraseology, punctuation and style.

23-4788. Consultation and cooperation with county attorney. (1) Whenever the commissioner determines that there appears to be sufficient evidence to justify a civil or criminal prosecution under the election laws of this state, he shall notify the county attorney of the county in which the alleged violation occurred and shall arrange to transmit to the county attorney all information relevant to the alleged violation. If the county attorney fails to initiate the appropriate civil or criminal action within 30 days after he receives notification of the alleged violation, the commissioner may then initiate the appropriate legal action.

(2) A county attorney may at any time prior to the expiration of the 30-day time period specified in subsection (1), waive his right to prosecute and thereby authorize the commissioner to initiate the appropriate civil or criminal action under the election law.

(3) The provisions of subsection (1) do not apply to a situation in which the alleged violation has been committed by the county attorney of a county. In this instance, the commissioner is authorized to directly prosecute any alleged violation of Title 23 or Title 37.

(4) If a prosecution is undertaken by the commissioner, all court costs associated with the prosecution shall be paid by the state of Montana, and all fines and forfeitures imposed pursuant to a prosecution by the commissioner shall be deposited in the state general fund.

(5) Nothing in Title 23 or Title 37 prevents a county attorney from inspecting any records, accounts, or books which must be kept pursuant to the provisions of Title 23 or Title 37 that are held by a political committee or candidate involved in an election to be held within the county. However, the inspections must be conducted during reasonable office hours.

(6) A county attorney may administer oaths and affirmations; subpoena witnesses; compel their attendance; take evidence; and require the production of any books, correspondence, memoranda, bank account statements of a political committee or candidate, or other records which are relevant or material for the purpose of conducting any investigation pursuant to the provisions of Title 23 or Title 37.

History: En. 23-4788 by Sec. 13, Ch. 480, L. 1975; amd. Sec. 46, Ch. 334, L. 1977; amd. Sec. 65, Ch. 365, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 334 and once by Ch. 365. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 334, Laws of 1977, substituted references to the election law or laws in subsections (1) and (2) for references to section 23-4793; inserted "or Title 37" throughout the section; added "and all

fines and forfeitures imposed pursuant to a prosecution by the commissioner shall be deposited in the state general fund" at the end of subsection (4); and made minor changes in phraseology, punctuation and style.

Chapter 365, Laws of 1977, deleted "as specified in section 23-4793" after "prosecution" near the middle of the first sentence of subsection (1), and after "action" at the end of subsection (2); inserted "or Title 37" throughout the section; added "and all fines and forfeitures imposed pursuant to a prosecution by the commissioner shall be deposited in the state general fund" at the end of subsection (4); and made minor changes in phraseology, punctuation and style.

23-4789. Right to inspect current accounts and reports. Every individual shall have the right to inspect any report or current account that must be kept or filed pursuant to the provisions of Title 23, R. C. M. 1947, but only if such inspection will occur during reasonable office hours and in such a manner that normal office functions will not be unnecessarily interrupted.

History: En. 23-4789 by Sec. 14, Ch. 480, L. 1975.

23-4790. Duties of county clerk and recorder. (1) A county clerk and recorder shall maintain all records and statements filed pursuant to the provisions of Title 23, R. C. M. 1947, for a period of ten (10) years from the date of receipt.

(2) A county clerk and recorder shall accept and file any information voluntarily supplied that exceeds the requirements of Title 23, R. C. M. 1947.

(3) A county clerk and recorder shall file, code, and cross-index all reports and statements filed as prescribed by the commissioner.

(4) A county clerk and recorder shall make statements and other information filed with his office available for public inspection and copying during regular office hours, and make copying facilities available free of charge or at a charge not to exceed actual cost.

History: En. 23-4790 by Sec. 15, Ch. 480, L. 1975.

23-4791. Names not to be printed on ballot. (1) The name of a candidate shall not be printed on the official ballot for a general or special election if the candidate or a political treasurer for a candidate fails to file any statement as required by Title 23, R. C. M. 1947.

(2) A vacancy on an official ballot under this section may be filled in the manner provided by law, but not by the name of the same candidate.

(3) In carrying out the mandate of this section, the commissioner must by a written statement notify the secretary of state or the city or county clerk or the clerk of a school district, that a candidate, or a candidate's political treasurer, has not complied with the provisions of Title 23, R. C. M. 1947, as described in subsection (1) and that a candidate's name should not be printed on the official ballot.

History: En. 23-4791 by Sec. 16, Ch. 480, L. 1975.

23-4792. Certificates of election may be withheld. No certificate of election shall be granted to any candidate until his political treasurer has filed the reports and statements that must be filed pursuant to the provisions of Title 23, R. C. M. 1947. No candidate for an elective office may assume the powers and duties of that office until he has received a certificate of election as provided by law. A certificate of election shall only be issued by the public official responsible for issuing a certificate or commission after receiving written assurance from the commissioner that a candidate has filed all of the reports that must be filed pursuant to the provisions of Title 23, R. C. M. 1947.

History: En. 23-4792 by Sec. 17, Ch. 480, L. 1975.

23-4793. Repealed.

Repeal

Section 23-4793 (Sec. 18, Ch. 480, L. 1975), relating to penalties for election

offenses, was repealed by Sec. 49, Ch. 334, Laws 1977.

23-4794. Secretary of state to furnish copies of certain election laws to appropriate officials. The secretary of state shall, at the expense of the state, furnish the county clerk and the city and town clerks with copies of the election laws relating to penalties, campaign practices, campaign finances, and contests. The public official with whom a candidate files a declaration or certificate of nomination shall transmit one of these copies to

the candidate. Such copies shall also be furnished to any other person required to file a statement. Upon his own information or at the written request of any voter, the secretary of state shall provide a copy to any other individual who may be a candidate or who may otherwise be required to make a statement required by Title 23 or Title 37.

History: En. 23-4794 by Sec. 19, Ch. 480, L. 1975; amd. Sec. 66, Ch. 365, L. 1977.

Amendments

The 1977 amendment substituted "the election laws relating to penalties, campaign practices, campaign finances, and contests" at the end of the first sentence for "Title 23, chapter 47, R. C. M. 1947";

substituted "one of these copies" in the second sentence for "a copy of Title 23, chapter 47, R. C. M. 1947"; deleted "of Title 23, chapter 47, R. C. M. 1947" after "copy" in the last sentence; substituted "Title 23 or Title 37" at the end of the last sentence for "this act"; and made minor changes in phraseology and punctuation.

23-4795. Limitation on contributions. (1) Aggregate contributions for all elections in a campaign by an individual, other than the candidate, to a candidate and political committees organized on his behalf are limited as follows:

(a) for candidates filed jointly for the office of governor and lieutenant governor, not to exceed \$1,500;

(b) for a candidate to be elected for state office in a statewide election, other than the candidates for governor and lieutenant governor, not to exceed \$750;

(c) for a candidate for public service commissioner, not to exceed \$400;

(d) for a candidate for district court judge, not to exceed \$300;

(e) for a candidate for the legislature, not to exceed \$250; and

(f) for a candidate for city or county office, not to exceed \$200.

(2) An independent committee means a committee which is not organized on behalf of a candidate or which is not controlled either directly or indirectly by a candidate or candidate's committee and which does not act jointly with a candidate or candidate's committee in conjunction with the making of expenditures or accepting contributions. For the purpose of limitation on contributions, political party organizations are independent committees. Aggregate contributions by an independent committee to a candidate and political committees organized on his behalf for all elections in a campaign are limited as follows:

(a) for candidates filed jointly for the offices of governor and lieutenant governor, not to exceed \$8,000;

(b) for a candidate to be elected for state office in a statewide election, other than the candidates for governor and lieutenant governor, not to exceed \$2,000;

(c) for a candidate for public service commissioner, not to exceed \$1,000;

(d) for a candidate for district court judge, not to exceed \$250;

(e) for a candidate for the legislature, not to exceed \$250;

(f) for a candidate for city or county office, not to exceed \$200.

(3) The limitations imposed by this section do not apply to public funds contributed to a candidate under any public financing provision of this code.

History: En. 23-4795 by Sec. 1, Ch. 481, L. 1975; amd. Sec. 67, Ch. 365, L. 1977.

Title of Act

An act imposing limitations on the amount of funds that may be contributed in support of or in opposition to a candidate; repealing sections 23-4727 and 23-4728, R. C. M. 1947; and providing for a delayed effective date.

Amendments

The 1977 amendment deleted "and his immediate family" after "other than the candidate" in subsection (1); deleted former subsection (3) which limited the amount of contributions by a candidate

and his immediate family and defined immediate family; redesignated former subsection (4) as subsection (3); and made minor changes in phraseology, punctuation and style.

Repealing Clause

Section 2, Ch. 481, Laws 1975 read "Sections 23-4727 and 23-4728, R. C. M. 1947, are repealed."

Effective Date

Section 3, Ch. 481, Laws 1975 read "This act is effective on January 1, 1976, and the limitations imposed by this act shall apply to all elections held after that date."

23-4796. Commissioner of campaign finances and practices. In 23-4778 through 23-4795, "commissioner" means the commissioner of campaign finances and practices created by 23-4785(1), unless the context clearly indicates otherwise.

History: En. 23-4796 by Sec. 3, Ch. 365, L. 1977.

Title of Act

An act to generally revise and clarify the laws relating to elections and to repeal sections 23-3021, 23-3030, and 23-4404, R. C. M. 1947.

23-4797 to 23-47-100. Reserved.

23-47-101. Election code not to supersede criminal code—statute of limitations. (1) The penalty provisions of the election laws of this state are intended to supplement and not to supersede the provisions of the Montana Criminal Code.

(2) Unless otherwise provided, the general time limitations for prosecutions for violations of the election laws are those specified in 94-1-106.

History: En. 23-47-101 by Sec. 1, Ch. 334, L. 1977.

Title of Act

An act to generally and substantively revise, repeal, and recodify the election laws relating to the criminal provisions for election and campaign practices.

23-47-102. Trivial benefits not covered by criminal provisions. It is not the intent of the election laws of this state to criminalize activities involving trivial benefits incidental to the campaign process which involve no substantial risk of undermining the election process.

History: En. 23-47-102 by Sec. 2, Ch. 334, L. 1977.

23-47-103. Violations as misdemeanor. A person who knowingly violates a provision of the election laws of this state for which no other penalty is specified is guilty of a misdemeanor.

History: En. 23-47-103 by Sec. 3, Ch. 334, L. 1977.

23-47-104. Attempt as a violation. An attempt, as defined in 94-4-103, to violate a provision of the election laws of this state is itself a violation of the election laws and is punishable as provided in 94-4-103.

History: En. 23-47-104 by Sec. 4, Ch. 334, L. 1977.

23-47-105. Aiding and abetting. A person who is legally accountable, as provided in 94-2-107, for the conduct of another which violates a provision of the election laws of this state is also guilty of a violation of that provision.

History: En. 23-47-105 by Sec. 5, Ch. 334, L. 1977.

23-47-106. Ineligibility to hold office because of conviction. In addition to all other penalties prescribed by law:

(1) a candidate who is convicted of violating any provision of Title 23 or Title 37, except 23-47-115(10), is ineligible to be a candidate for any public office in the state of Montana until his final discharge from state supervision;

(2) a campaign treasurer who is convicted of violating any provision of Title 23 or Title 37, except 23-47-115(10), is ineligible to be a candidate for any public office or to hold the position of campaign treasurer in any campaign in the state of Montana until his final discharge from state supervision;

(3) if an elected official, while a candidate for nomination, was guilty of any act which was wrongful or unlawful or which would be sufficient to cause his removal from office if committed during the general election campaign, he shall, upon conviction, be removed from office in the same manner as though the act had been committed during the general election, even though he may have been regularly elected and was not guilty of a wrongful or unlawful act during the election at which he was elected to office.

History: En. 23-47-106 by Sec. 6, Ch. 334, L. 1977.

23-47-107. Voiding election. (1) If a court of competent jurisdiction finds that the violation of any provision of Title 23 or Title 37, by any candidate or political committee probably affected the outcome of any election, the result of that election may be held void and a special election held within 60 days of that finding. If the violation occurred during a primary election, the court may direct the appropriate political party to select a new candidate according to the provisions of state law and the custom of the party. Except as provided in subsection (2), an action to void an election shall be commenced within 1 year of the date of the election in question.

(2) An action to void a bond election shall be commenced within 60 days of the date of the election in question.

History: En. 23-47-107 by Sec. 7, Ch. 334, L. 1977.

23-47-108. Powers of district court. In any action brought under the election laws of this state, the appropriate district court may enjoin any person to prevent the doing of any prohibited act or to compel the performance of any act required by the election laws.

History: En. 23-47-108 by Sec. 8, Ch. 334, L. 1977.

23-47-109. Electors and ballots. (1) An elector may not show the contents of his ballot to anyone after it is marked. No elector may place any mark upon the ballot by which it may be identified as the one voted by him.

(2) An elector may not receive a ballot from any person other than an election judge and may not vote any ballot except one received from an election judge. No person other than an election judge may deliver a ballot to an elector.

(3) No person may solicit an elector to show his ballot after it is marked.

(4) An elector who does not vote a ballot delivered to him shall, before leaving the polling place, return the ballot to an election judge.

History: En. 23-47-109 by Sec. 9, Ch. 334, L. 1977.

23-47-110. Conduct of officers and clerks of election. No officer or clerk of election may:

(1) deposit in a ballot box a ballot on which the official stamp, as provided by law, does not appear;

(2) prior to putting the ballot of an elector in the ballot box, attempt to find out any name on the ballot or open or examine the folded ballot of an elector;

(3) look at any mark made by the voter upon the ballot;

(4) make or place any mark or device on any folded ballot with the intent to ascertain the name of any person for whom the elector has voted;

(5) allow any person other than the voter to be present at the marking of the ballot except as provided in 23-3609 and 23-3812(1); or

(6) make a false statement in a certificate regarding affirmation.

History: En. 23-47-110 by Sec. 10, Ch. 334, L. 1977.

23-47-111. Interference with officials. A person who, in any manner, interferes with the officers holding an election or conducting a canvass so as to prevent the election or canvass from being fairly held and lawfully conducted is guilty of obstruction of a public servant and is punishable as provided in 94-7-302.

History: En. 23-47-111 by Sec. 11, Ch. 334, L. 1977.

23-47-112. Official misconduct. A person charged with performance of any duty under the provisions of the election laws of this state is guilty

of official misconduct and is punishable as provided in 94-7-401 whenever the person :

- (1) knowingly neglects or refuses to perform that duty; or
- (2) knowingly and fraudulently acts, in his official capacity, in contravention or violation of any provision of the election laws.

History: En. 23-47-112 by Sec. 12, Ch. 334, L. 1977.

23-47-113. Tampering with election records and information. A person is guilty of tampering with public records or information and is punishable as provided in 94-7-209 whenever the person :

- (1) suppresses any declaration or certificate of nomination which has been filed;
- (2) purposely causes the vote on a machine to be incorrectly recorded as to the candidate or ballot issue voted on;
- (3) in an election return, knowingly adds to or subtracts from the votes actually cast at the election;
- (4) changes any ballot after the same has been deposited in the ballot box or adds any ballot to those legally polled at an election, either before or after the ballots have been counted, with the purpose of changing the result of the election;
- (5) causes any name to be placed on the registry lists other than in the manner provided by this title; or
- (6) changes a poll list or check list.

History: En. 23-47-113 by Sec. 13, Ch. 334, L. 1977.

23-47-114. Injury to election equipment, materials, and records. A person is guilty of criminal mischief or tampering with public records and information, as appropriate, and is punishable as provided in 94-6-102 or 94-7-209, as applicable, whenever the person :

- (1) prior to or on election day, knowingly defaces or destroys any list of candidates posted in accordance with the provisions of the law;
- (2) during an election :
 - (a) removes or defaces the cards printed for the instruction of the voters; or
 - (b) removes or destroys any of the supplies or other conveniences placed in the booths or compartments for the purpose of enabling a voter to prepare his ballot;
- (3) removes any ballots from the polling place before the closing of the polls with the purpose of changing the result of the election;
- (4) carries away or destroys any poll lists, check lists, ballots, or ballot boxes for the purpose of disrupting or invalidating an election;
- (5) knowingly detains, mutilates, alters, or destroys any election returns;
- (6) mutilates, secretes, destroys, or alters election records, except as provided by law;

(7) tampers with, disarranges, defaces, injures, or impairs a voting machine;

(8) mutilates, injures, or destroys any ballot or appliance used in connection with a voting machine; or

(9) fraudulently defaces or destroys a declaration or certificate of nomination.

History: En. 23-47-114 by Sec. 14, Ch. 334, L. 1977.

23-47-115. Deceptive election practices. A person is guilty of false swearing, unsworn falsification, or tampering with public records or information, as appropriate, and is punishable as provided in 94-7-203, 94-7-204, or 94-7-209, as applicable, whenever the person:

(1) falsely represents his name or other information required upon his registry card and causes registration with the card;

(2) signs a registry card knowingly witnessing any false or misleading statement;

(3) knowingly submits a false report or deliberately fails to include information in a report required by Title 23 or Title 37;

(4) knowingly causes a false statement, certificate, or return of any kind to be signed;

(5) falsely makes a declaration or certificate of nomination;

(6) files or receives for filing a declaration or certificate of nomination knowing that all or part of the declaration or certificate is false;

(7) forges or falsely makes the official endorsement of a ballot;

(8) forges or counterfeits returns of an election purporting to have been held at a precinct, municipality, or ward where no election was in fact held;

(9) knowingly substitutes forged or counterfeit returns of election in place of the true returns for a precinct, municipality, or ward where an election was held;

(10) signs a name other than his own to a petition, signs more than once for the same measure, or signs a petition while not being a qualified elector of the state; or

(11) makes a false oath or affidavit where an oath or affidavit is required by law.

History: En. 23-47-115 by Sec. 15, Ch. 334, L. 1977.

23-47-116. Deceiving an elector. A person who deceives an elector voting under 23-3609 or 23-3812 is guilty of a misdemeanor.

History: En. 23-47-116 by Sec. 16, Ch. 334, L. 1977.

23-47-117. Fraudulent registration. (1) No person may knowingly cause, procure, or allow himself to be registered in the official register of any election district of any county knowing himself not to be entitled to such registration.

(2) No person may falsely personate another and cause the person so personated to be registered.

(3) When, on the trial of the person charged with any offense under the provisions of this section, it appears in evidence that the accused stands registered in the register of any county without being qualified for such registration, the court shall order such registration canceled.

History: En. 23-47-117 by Sec. 17, Ch. 334, L. 1977.

23-47-118. Limits on voting rights. (1) No person may vote who is not entitled to vote. No person may vote more than once at an election.

(2) No person may, for any election, apply for a ballot in the name of some other person, whether it be the name of a living, dead, or fictitious person.

History: En. 23-47-118 by Sec. 18, Ch. 334, L. 1977.

23-47-119. Electioneering. (1) No person may do any electioneering on election day within any polling place or any building in which an election is being held or within 200 feet thereof.

(2) No officer or clerk of election may do any electioneering on election day.

(3) No person may buy, sell, give, or provide a political badge, button, or other insignia to be worn at or about the polls on the day of an election, and no such political badge, button, or other insignia may be worn at or about the polls on an election day.

History: En. 23-47-119 by Sec. 19, Ch. 334, L. 1977.

23-47-120. Betting on elections. (1) A person who makes, offers, or accepts any bet or wager upon the result of any election; upon the success or failure of any person or candidate; upon the number of votes to be cast, either in the aggregate or for any particular candidate; or upon the vote to be cast by any person is guilty of a misdemeanor.

(2) If the bet or wager is made for the purpose of influencing the result of the election, the act of betting is grounds to challenge the bettor's right to vote.

(3) A candidate who, before or during an election campaign, makes any bet or wager of anything of pecuniary value; in any manner becomes a party to any bet or wager on the result of the election in his electoral district (or in any part thereof) or on any event or contingency relating to any pending election; or provides money or other valuables to be used by any person in betting or wagering upon the results of any impending election is guilty of a misdemeanor.

History: En. 23-47-120 by Sec. 20, Ch. 334, L. 1977.

23-47-121. Preventing public meetings of electors. (1) A person who, by threats, intimidations, or violence, willfully hinders or prevents electors

from assembling in public meeting for the consideration of public questions is guilty of a misdemeanor.

(2) A person who willfully disturbs or breaks up a public meeting of electors or others, lawfully being held for the purpose of considering public questions, or a public school meeting is guilty of a misdemeanor.

History: En. 23-47-121 by Sec. 21, Ch. 334, L. 1977.

23-47-122. Illegal influence of voters. No person, directly or indirectly, by himself or by any other person on his behalf, for any election, to or for any person on behalf of any elector or to or for any person, in order to induce any elector to vote or refrain from voting or to vote for or against any particular candidate, political party ticket, or ballot issue, may:

(1) give, lend, agree to give or lend, offer, or promise any money, liquor, or valuable consideration or promise or endeavor to procure any money, liquor, or valuable consideration;

(2) promise to appoint another person or promise to secure or aid in securing the appointment, nomination, or election of another person to a public or private position or employment or to a position of honor, trust, or emolument, in order to aid or promote his nomination or election, except that he may publicly announce or define what is his choice or purpose in relation to an election in which he may be called to take part, if elected.

History: En. 23-47-122 by Sec. 22, Ch. 334, L. 1977.

23-47-123. Illegal consideration for voting. No person, directly or indirectly, by himself or by any other person in his behalf may:

(1) before or during any election, for voting or agreeing to vote or for refraining or agreeing to refrain from voting at the election or for inducing another to do so:

(a) receive, agree, or contract for any money, gift, loan, liquor, valuable consideration, office, place, or employment for himself or any other person; or

(b) approach any candidate or agent or person representing or acting on behalf of any candidate at the election and ask for or offer to agree or contract for any money, gift, loan, liquor, valuable consideration, office, place, or employment for himself or any other person;

(2) after an election, for having voted or refrained from voting or having induced any other person to vote or refrain from voting at the election:

(a) receive any money, gift, loan, valuable consideration, office, place, or employment; or

(b) approach any candidate or any agent or person representing or acting on behalf of any candidate and ask for or offer to receive any money, gift, loan, liquor, valuable consideration, office, place, or employment for himself or any other person.

History: En. 23-47-123 by Sec. 23, Ch. 334, L. 1977.

23-47-124. Illegal assistance to naturalized citizens. No elector, candidate for nomination, nominee, or political committee may pay or offer to pay the fee for any person who is about to or has made his declaration of intention or who has taken out or is about to take out his final papers as a citizen of the United States, with the purpose of influencing that person's vote in an election. No person may receive any money or other valuable thing to pay such fee or permit the same to be paid for him for such a purpose.

History: En. 23-47-124 by Sec. 24, Ch. 334, L. 1977.

23-47-125. Officers and clerks not to influence voter. No officer or clerk of election, while acting in his official capacity, may, by menace, reward, or promise of reward, induce or attempt to induce any elector to cast a vote contrary to his original intention or desire.

History: En. 23-47-125 by Sec. 25, Ch. 334, L. 1977.

23-47-126. Coercion or undue influence of voters. (1) No person, directly or indirectly, by himself or any other person in his behalf, in order to induce or compel a person to vote or refrain from voting for any candidate, the ticket of any political party, or any ballot issue before the people, may:

(a) use or threaten to use any force, coercion, violence, restraint, or undue influence against any person; or

(b) inflict or threaten to inflict, by himself or any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person.

(2) No person who is a minister, preacher, priest, or other church officer or who is an officer of any corporation or organization, religious or otherwise, may, other than by public speech or print, urge, persuade, or command any voter to vote or refrain from voting for or against any candidate, political party ticket, or ballot issue submitted to the people because of his religious duty or the interest of any corporation, church, or other organization.

(3) No person may, by abduction, duress, or any fraudulent contrivance, impede or prevent the free exercise of the franchise by any voter at any election or thereby compel, induce, or prevail upon any elector to give or to refrain from giving his vote at any election.

(4) No person may, in any manner, interfere with a voter lawfully exercising his right to vote at an election so as to prevent the election from being fairly held and lawfully conducted. No person may obstruct the doors or entries of any polling place.

History: En. 23-47-126 by Sec. 26, Ch. 334, L. 1977.

23-47-127. Demands and requests of candidates. (1) No person may demand, solicit, request, or invite any payment or contribution for any religious, political, charitable, or other cause or organization supposed to

be primarily or principally for the public good from a person who seeks to be or has been nominated or elected to any office in return for political support by the donee. No candidate or elected person may make any payment or contribution if it is demanded or asked for such a purpose during the time he is a candidate for nomination or election to or an incumbent of any office. No payment or contribution for any purpose may be made a condition precedent to the putting of a name on any caucus or convention ballot or nomination paper or petition or to the performance of any duty imposed by law on a political committee.

(2) No person may demand, solicit, ask, or invite any candidate to subscribe to the support of any club or organization, buy tickets to any entertainment or ball, or subscribe for or pay for space in any book, program, periodical, or other publication in return for political support by the donee. No candidate may make any such payment or contribution with apparent hope or intent to influence the result of the election.

(3) This section does not apply to the soliciting of any business advertisement for insertion in a periodical in which the candidate was regularly advertising prior to his candidacy, to ordinary business advertising, to his regular payment to any organization (religious, charitable, or otherwise) of which he may have been a member or to which he may have been a contributor for more than 6 months before his candidacy, or to ordinary contributions at church services.

History: En. 23-47-127 by Sec. 27, Ch. 334, L. 1977.

23-47-128. Bribing members of political gatherings. (1) No person may give or offer a bribe to any officer or member of any legislative caucus, political convention, or political gathering of any kind held for the purpose of nominating candidates for offices of honor, trust, or profit in this state, with intent to influence the person to whom such bribe is given or offered to be more favorable to one candidate than another. No person who is a member of any of the bodies mentioned in this section may receive or offer to receive any such bribe.

(2) A violation of this section is punishable as provided in 94-7-102(2).

History: En. 23-47-128 by Sec. 28, Ch. 334, L. 1977.

23-47-129. Improper nominations. (1) No person may pay or promise valuable consideration to another, in any manner or form, for the purpose of inducing him to be or to refrain from or to cease being a candidate, and no person may solicit or receive any payment or promise from another for such purpose.

(2) No person, in consideration of any gift, loan, offer, promise, or agreement, as mentioned in subsection (1), may:

(a) allow himself to be nominated or refuse to allow himself to be nominated as a candidate at an election;

(b) become, by himself or in combination with any other person or persons, a candidate for the purpose of defeating the nomination or election of any other person, without a bona fide intent to obtain the office; or

(c) withdraw if he has been so nominated.

(3) Upon complaint made to any district court, the judge shall issue a writ of injunction restraining the officer whose duty it is to prepare official ballots for a nominating election from placing the name of a person thereon as a candidate for nomination to any office if the judge is convinced that:

(a) the person has sought the nomination or seeks to have his name presented to the voters as a candidate for nomination by any political party for any mercenary or venal consideration or motive; and

(b) his candidacy for the nomination is not in good faith.

History: En. 23-47-129 by Sec. 29, Ch. 334, L. 1977.

23-47-130. Providing money for bribery or corrupt practices. No person may knowingly pay or cause to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery or corrupt practices at any election.

History: En. 23-47-130 by Sec. 30, Ch. 334, L. 1977.

23-47-131. Illegal contributions. Any person who accepts a contribution prohibited by Title 23 or Title 37, R.C.M. 1947; who makes a contribution in excess of the amounts specified in Title 23 or Title 37, R.C.M. 1947; or who makes a contribution in any manner other than that provided in Title 23 or Title 37, R.C.M. 1947, is guilty of an illegal practice and is punishable by a fine not to exceed \$1,000, imprisonment in the county jail for a term not to exceed 6 months, or both, for each separate violation.

History: En. 23-47-131 by Sec. 31, Ch. 334, L. 1977.

23-47-132. Publications in newspapers and periodicals. (1) No publisher of a newspaper or other periodical may insert, either in its advertising or reading columns, any paid matter which is designed or tends to aid, injure, or defeat any candidate, any political party or organization, or any measure before the people, unless it is stated therein that it is a paid advertisement. The name of the chairman or secretary, the names of the other officers of the political or other organization inserting the same, or the name of some voter who is responsible therefor (with his address) is to appear in such advertisement.

(2) No person may pay the owner, editor, publisher, or agent of any newspaper or other periodical to induce him to editorially advocate or oppose any candidate for nomination or election, and no such owner, editor, publisher, or agent may accept such payment.

(3) A person who violates this section is guilty of a misdemeanor.

History: En. 23-47-132 by Sec. 32, Ch. 334, L. 1977.

23-47-133. Election materials not to be anonymous. It is unlawful to write, print, publish, mimeograph, type, or otherwise produce or circulate through the mails or otherwise any letter, circular, bill, dodger, pamphlet,

placard, poster, or other document relating to any election or to any candidate, political party, political committee, or ballot issue at any election unless the same bears on its face the name and address of the person paying for the printing or publishing and the name of the printer and publisher. A person writing, printing, publishing, circulating, posting, mimeographing, typing, or causing to be written, printed, circulated, posted, mimeographed, typed, or published any such letter, bill, placard, dodger, pamphlet, circular, poster, or other document which fails to bear on its face the name and address of the person paying for the printing or publishing and the name of the printer or publisher is guilty of an illegal practice and shall on conviction thereof be punished by a fine of not less than \$10 or more than \$1,000.

History: En. 23-47-133 by Sec. 33, Ch. 334, L. 1977.

23-47-134. Unlawful acts of employers and employees. (1) It is unlawful for any employer, in paying his employees the salary or wages due them, to enclose their pay in pay envelopes upon which is written or printed the name of any candidate or political mottoes, devices, or arguments containing threats or promises (express or implied) calculated or intended to influence the political opinions or actions of such employees. It is unlawful for an employer to exhibit in a place where his workers or employees may be working any handbill or placard containing any threat, promise, notice, or information that in case any particular ticket or political party, organization, or candidate is elected work in his place or establishment will cease, in whole or in part, or will be continued or increased; his place or establishment will be closed; the salaries or wages of his workers or employees will be reduced or increased; or other threats or promises (express or implied) intended or calculated to influence the political opinions or actions of his workers or employees. This section shall apply to corporations, individuals, and public officers and employees.

(2) No person may attempt to coerce, command, or require a public employee to give money, service, or other thing of value to aid or promote any political committee or to aid or promote the nomination or election of any person to public office.

(3) No public employee may solicit any money, influence, service, or other thing of value or otherwise aid or promote any political committee or the nomination or election of any person to public office while on the job or at his place of employment. However, nothing in this section is intended to restrict the right of a public employee to express his personal political views.

(4) Any person who violates the provisions of this section shall be fined not to exceed \$1,000, be imprisoned in the county jail for a term not to exceed 6 months, or both, for each separate offense.

History: En. 23-47-134 by Sec. 34, Ch. 334, L. 1977.

23-47-135. Prohibition of salary increase contribution. A corporation may not increase the salary of any officer or employee or give an emolument

to any officer, employee, or other person with the intention that the increase in salary, the emolument, or any part thereof be contributed to support or oppose a candidate or ballot issue.

History: En. 23-47-135 by Sec. 35, Ch. 334, L. 1977.

23-47-136. Proceedings against corporations. In like manner as prescribed for the contesting of an election, any corporation organized under the laws of or doing business in the state of Montana may be brought into court on the ground of deliberate, serious, and material violation of the provisions of Title 23 or Title 37. The petition shall be filed in the district court in the county where the corporation has its principal office or where the violation of law is averred to have been committed. The corporation, upon conviction, is punishable:

(1) if it is organized under the laws of this state, by a fine not to exceed \$10,000, by cancellation of the certificate of incorporation, or by both fine and cancellation; or

(2) if it is a foreign corporation, by a fine not to exceed \$10,000, by enjoining the corporation from further transacting business in this state, or by both fine and injunction.

History: En. 23-47-136 by Sec. 36, Ch. 334, L. 1977.

23-47-137. Transfer of convention credential. No person may invite, offer, or effect the transfer of any convention credential in return for any payment of money or other valuable thing.

History: En. 23-47-137 by Sec. 37, Ch. 334, L. 1977.

23-47-138. Unlawful for political party to endorse judicial candidate. A political party which endorses a candidate for justice of the supreme court or district court judge, a person who participates in an endorsement by a political party, or a person who acts on behalf of a political party in endorsing a judicial candidate is guilty of a misdemeanor.

History: En. 23-47-138 by Sec. 38, Ch. 334, L. 1977.

23-47-139. Prohibition on certain public officers from acting as delegates or members of political committees. No holder of a public position, other than an office filled by the voters, may be a delegate to a convention for the election district that elects the officer or board under whom he directly or indirectly holds such position, nor may he be a member of a political committee for such district.

History: En. 23-47-139 by Sec. 39, L. 1977.

cations, the part remains in effect in all valid applications that are severable from the invalid applications."

Separability Clause

Section 48 of Ch. 334, Laws 1977 read "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its appli-

Repealing Clause

Section 49 of Ch. 334, Laws 1977 read "Sections 23-2606, 23-3025, 23-3029, 23-3317, 23-3717, 23-3820, 23-3821, 23-4511, 23-4701, 23-4702, 23-4703, 23-4704, 23-4705,

23-4706, 23-4707, 23-4708, 23-4709, 23-4710, 4744.1, 23-4745, 23-4747, 23-4748, 23-4749,
 23-4711, 23-4712, 23-4713, 23-4714, 23-4715, 23-4751, 23-4752, 23-4753, 23-4754, 23-4756,
 23-4716, 23-4717, 23-4718, 23-4719, 23-4720, 23-4768, 23-4773, and 23-4793, R. C. M.
 23-4721, 23-4723, 23-4724, 23-4732, 23-4738, 1947, are repealed."
 23-4740, 23-4741, 23-4742, 23-4743, 23-

CHAPTER 48

CONSTITUTIONAL CONVENTIONS

Section

- 23-4801. Question of holding convention submitted at least every 20 years.
 23-4802. Ballot—form—contents.

23-4801. Question of holding convention submitted at least every 20 years. Unless otherwise submitted earlier, the secretary of state shall cause the question of holding an unlimited constitutional convention to be submitted to the people at the general election in 1990. The same question shall be submitted at the general election in each twentieth year following its last submission, unless otherwise submitted earlier.

History: En. Sec. 1, Ch. 36, L. 1973. providing for the submission of the question of whether or not to hold a constitutional convention at least every twenty (20) years.

Title of Act

An act implementing article XIV, section 3 of the 1972 Montana constitution,

23-4802. Ballot—form—contents. The ballot submitting the question to the people shall contain the attorney general's explanatory statement and the following:

Pursuant to article XIV, sections 3 and 4 of the Montana constitution, the secretary of state shall cause the question of holding an unlimited constitutional convention to be submitted to the people at the general election in each twentieth year following its last submission. If a majority of those voting on the question answer in the affirmative, the legislature shall provide for the calling thereof at its next session.

☐ FOR CALLING A CONSTITUTIONAL CONVENTION

☐ AGAINST CALLING A CONSTITUTIONAL CONVENTION

History: En. Sec. 2, Ch. 36, L. 1973.

CHAPTER 49—PUBLIC CAMPAIGN FUND ACT

Section

- 23-4901. Short title.
 23-4902. Definitions.
 23-4903. Designation by taxpayer.
 23-4904. Public campaign fund.
 23-4905. Records to be kept—open to inspection.
 23-4906. Penalties for violation.

23-4901. Short title. This chapter may be cited as "The Public Campaign Fund Act".

History: En. 23-4901 by Sec. 1, Ch. 263, L. 1974; amd. Sec. 1, Ch. 538, L. 1977.

Title of Act

An act creating a gubernatorial cam-

paign fund; allowing a taxpayer to designate one dollar (\$1) of his tax liability to that fund; providing that moneys be paid from the fund to the treasurer of each qualifying political party to be used for gubernatorial campaign expenses; providing for a penalty for misuse of the funds; and providing for a termination date.

Amendments

The 1977 amendment rewrote this sec-

tion which read "It is the purpose of this act to allow the conduct of an experiment in the public financing of political campaigns in this state; to determine public reaction to grass roots participation in campaign financing through a designation by a taxpayer of one dollar (\$1) of his tax liability to a campaign fund; and to allow legislative review of public campaign financing based upon the results of the limited experiment authorized by this act."

23-4902. Definitions. As used in this act, unless the context requires otherwise:

(1) "Fund" means the election campaign fund established in section 4 [23-4904] of this act.

(2) "Political party" is a party whose candidate for governor in the last general election received five per cent (5%) or more of the total votes cast for that office as verified by the secretary of state.

(3) "Department" means the department of revenue provided for in Title 82A, chapter 18.

(4) "Candidate" means an individual who has been nominated by a political party for election to public office in this state.

(5) "Individual" means a natural person.

History: En. 23-4902 by Sec. 2, Ch. 263, L. 1974; amd. Sec. 2, Ch. 538, L. 1977.

Amendments

The 1977 amendment substituted "public office in this state" in subdivision (4) for "the office of governor of this state."

23-4903. Designation by taxpayer. (1) An individual whose income tax liability under Title 84, chapter 49 for a taxable year is one dollar (\$1) or more may designate one dollar (\$1) be paid over to the fund. In the case of a joint return, as provided in section 84-4914, of a husband and wife having an income tax liability of two dollars (\$2) or more, each spouse may designate one dollar (\$1) be paid to the fund.

(2) The department shall provide a place on the face of the blank form of return, provided for in section 84-4919, where an individual may make the designation provided for in subsection (1). The form shall adequately explain the individual's option to designate one dollar (\$1) to the fund and that a designation does not increase tax liability.

History: En. 23-4903 by Sec. 3, Ch. 263, L. 1974.

23-4904. Public campaign fund. (1) There is a public campaign fund within the earmarked revenue fund provided for in section 79-410.

(2) All monies designated under section 2 [23-4902] of this act shall be deposited in the fund.

(3) Five (5) months before the general election in a gubernatorial election year all monies in the fund shall be paid over in equal amounts to the treasurer of each political party, to be spent only for the legitimate

campaign expenses of candidates for public offices which offices have been designated by the legislature.

History: En. 23-4904 by Sec. 4, Ch. 263, L. 1974; amd. Sec. 3, Ch. 538, L. 1977.

Amendments

The 1977 amendment substituted "a public campaign fund" in subsection (1)

for "an election campaign fund"; and substituted "candidates for public offices which offices have been designated by the legislature" at the end of subsection (3) for "the gubernatorial candidate."

23-4905. Records to be kept—open to inspection. (1) The treasurer of each political party shall maintain a complete record of all disbursements of funds received by him under section 3 [23-4903] and used for the candidate's campaign expenses plus receipts or other evidence of each expense.

(2) The record shall be available for inspection by anyone at any reasonable time. A copy shall be deposited in the office of the secretary of state by December 31 of each general election year.

History: En. 23-4905 by Sec. 5, Ch. 263, L. 1974.

23-4906. Penalties for violation. The use of moneys from the fund by anyone for any purpose other than the legitimate campaign expenses of a candidate for a designated public office is an offense and is punishable by imprisonment for not more than one (1) year, or by a fine of not more than five thousand dollars (\$5,000); or by both.

History: En. 23-4906 by Sec. 6, Ch. 263, L. 1974; amd. Sec. 4, Ch. 538, L. 1977.

Amendments

The 1977 amendment substituted "a designated public office" for "governor."

Repealing Clause

Section 5 of Ch. 538, Laws 1977 read "Section 7, Chapter 263, Laws of 1974, is repealed."

TITLE 24—ELECTRIC LINES CONSTRUCTION

Chapter

1. Regulation, construction of electric light, heat and power lines, 24-107.
2. Relocation of overhead utility lines, 24-201 to 24-204.

CHAPTER 1—REGULATION, CONSTRUCTION OF ELECTRIC LIGHT, HEAT AND POWER LINES

Section

24-107. Guy insulation.

24-107. (2683) Guy insulation. Any guy wire attached to any pole or appliance on which is run, placed, erected, or maintained any wire or cable used to conduct or carry electricity for the purpose of light, heat, or power, or used jointly with telephone, telegraph, or other signal wires, shall be permanently and effectively insulated at all times, by the insertion of at least two (2) strain insulators. The upper of these insulators shall be inserted in the guy so as to be at least six (6) feet in a horizontal line from the pole itself, and the second strain insulator shall be inserted in the guy so as to be not less than eight (8) feet in a vertical line from the surface of the ground. In short guys in which the two (2) insulators are required, and which will be located at the same point or near each other, two (2) insulators may be coupled in series and put into the guy together. All strain insulators shall be so constructed and maintained that the guy wire or guy cable holding the insulator in place shall interlock in case of failure or breakage thereof. A single fiberglass strain insulator may be substituted and used in lieu of the two (2) strain insulators. Such fiberglass strain insulators must have mechanical strength equal to or greater than the guy strand used and must have a wet flash over rating equal to the highest line to line voltage involved in the guying application and must have a dry flash over rating equal to two (2) times the line to line voltage. The above shall not apply to railway electrification, where at least one (1) insulator shall be inserted in each end of every auxiliary cross-span, and one in each auxiliary guy, and provided further, that in accord with the provisions of the national electric safety code, the above shall not apply to lines in rural areas where a common neutral is used and both primary and secondary circuits and also the guys are grounded to said common neutral and said common neutral has at least four (4) ground connections in each mile in addition to each ground connection at individual services.

History: En. Sec. 7, Ch. 171, L. 1917; re-en Sec. 2683, R.C.M. 1921; amd. Sec. 6, Ch. 137, L. 1941; amd. Sec. 1, Ch. 248, L. 1947; amd. Sec. 1, Ch. 344, L. 1971.

Amendments

The 1971 amendment inserted the fifth and sixth sentences, relating to the use of fiberglass insulators.

24-125. (2701) National electrical safety code—applies when.

Cross-References

Public service commission continued as

head of department of public service regulation, sec. 82A-1702.

Negligence

Where railroad's communications line installation met or exceeded requirements of national electrical safety code in every instance, there was no such negligence on the part of railroad as would support liability for the death of an invitee from electrical shock and railroad should have been dismissed on motion for summary judgment. *State ex rel. Burlington Northern, Inc. v. District Court*, 159 M 295, 496 P 2d 1152.

Violation Not Negligent

Violation of minimum national electrical safety code requirements was not negligent where electric lines had been installed at the minimum height above the ground, and the act of the plaintiff in locating his trailer under the power lines without notice to the power company had caused the violation of the standards for minimum clearance above buildings. *Turley v. Montana Power Co.*, — M —, 534 P 2d 1254.

CHAPTER 2—RELOCATION OF OVERHEAD UTILITY LINES**Section**

- 24-201. Definitions.
- 24-202. Petition for relocation of overhead line.
- 24-203. Hearing and order.
- 24-204. Costs of relocation.

24-201. Definitions. As used in this act:

(1) "overhead utility line" means a facility for the transmission or distribution of electricity or telephone messages along wires or cables suspended above the ground between single or double poles and their respective anchors, and

(2) "agricultural improvement" includes, without limitation, sprinkler irrigation systems.

History: En. 24-201 by Sec. 1, Ch. 123, Title of Act
 L. 1975. An act establishing a procedure for the relocation of overhead utility lines in certain cases.

24-202. Petition for relocation of overhead line. An owner of agricultural land across which an overhead utility line has been constructed may petition the district court for an order for relocation of the line for the purpose of installing an agricultural improvement. The petition shall set forth the nature of the proposed agricultural improvement, the increase in productivity of the land anticipated to result from the improvement, and a feasible alternative route, across other land to be provided by the petitioner at no cost to the owner of the overhead utility line.

History: En. 24-202 by Sec. 2, Ch. 123,
 L. 1975.

24-203. Hearing and order. The district court shall, upon notice to the owner of the overhead utility line, hear evidence bearing upon the matters presented in the petition. The court shall grant, or modify and grant as modified, the petition and order the owner of the line to relocate the line, if the evidence establishes a substantial improvement in agricultural productivity and the feasibility of the relocated route.

History: En. 24-203 by Sec. 3, Ch. 123,
 L. 1975.

24-204. Costs of relocation. The costs of relocating an overhead utility line as ordered under section [3 of this act] shall be paid fifty per cent

(50%) by the utility and fifty per cent (50%) by the owner of the land. However, if the person petitioning for the order fails for any reason to install the agricultural improvement within two (2) years following the date relocation is completed, he must reimburse the owner of the line the full cost of relocation, and the court has continuing jurisdiction over the parties for the purpose of ordering such reimbursement.

History: En. 24-204 by Sec. 4, Ch. 123,
L. 1975.

TITLE 25—FEES AND SALARIES

Chapter

1. Fees of state officers, 25-102.
2. Fees of county officers, 25-210, 25-222 to 25-226, 25-229, 25-231, 25-232, 25-236, 25-237.
3. Fees and salaries of justices of the peace and constables, 25-301, 25-307, 25-310 to 25-312.
4. Jurors' and witnesses' fees, 25-401, 25-403, 25-404, 25-409, 25-410.
5. Salaries of state officers, deputies and employees, 25-501, 25-507.1 to 25-507.10, 25-508.
6. Salaries of county officers, deputies and employees, 25-604, 25-605, 25-609.1.

CHAPTER 1—FEES OF STATE OFFICERS

Section

25-102. Fees of secretary of state.

25-102. (145) Fees of secretary of state. The secretary of state, for services performed in his office, must charge and collect the following fees:

1. For each copy of any law, resolution or record or other document or paper on file in his office, except corporate papers, forty cents (\$.40) per folio, or, if the copy is made by any process of reproduction by photographic, photostatic or similar process, the fee shall be fifty cents (\$.50) per page or fraction thereof.

2. and 3. * * * [Same as parent volume.]

4. For each commission or other document, signed by the governor, and attested by the secretary of state (pardon, military commissions and extraditions excepted), five dollars (\$5).

5. to 7. * * * [Same as parent volume.]

8. For filing and recording any paper, record, or other document or other than a standard form when recommended by the secretary of state, five dollars (\$5).

History: Ap. p. Sec. 410, Pol. C. 1895; amd. Sec. 1, p. 47, L. 1899; amd. Sec. 1, Ch. 127, L. 1903; amd. Sec. 1, Ch. 74, L. 1905; re-en. Sec. 165, Rev. C. 1907; amd. Sec. 1, Ch. 91, L. 1921; re-en. Sec. 145, R.C.M. 1921; amd. Sec. 1, Ch. 50, L. 1935; amd. Sec. 1, Ch. 116, L. 1961; amd. Sec. 141, Ch. 300, L. 1967; amd. Sec. 3, Ch. 185, L. 1971; amd. Sec. 1, Ch. 137, L. 1974. Cal. Pol. C. Sec. 416.

Amendments

The 1971 amendment reduced the fee specified at the end of subdivision 1

from 75¢ to 50¢ per page; and added subdivision 8.

The 1974 amendment inserted "and extraditions" in subdivision 4; and made minor changes in punctuation and phraseology.

Effective Date

Section 2 of Ch. 137, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 11, 1974.

CHAPTER 2—FEES OF COUNTY OFFICERS

Section

- 25-210. Fees for naturalization.
25-222. Penalty for false oath.
25-223. Penalty for failure to pay over fees.
25-224. Penalty for making false report.

- 25-225. Penalty for sheriff falsely representing his mileage.
- 25-226. Fees of sheriff.
- 25-229. Sheriff falsely representing his expenses for boarding prisoners.
- 25-231. Fees of county clerks.
- 25-232. Fees of clerk of district court.
- 25-236. Fees of coroner.
- 25-237. Fees of public administrator.

25-210. (4894) Fees for naturalization. The clerk of the district court shall collect from every person to whom a final certificate of naturalization is issued, at the time the same is issued, all fees authorized by law. All fees must be accounted for and paid to the county treasurer as provided by section 25-203, and shall be credited to the general fund of the county.

History: En. Sec. 1, p. 50, L. 1899; re-en. Sec. 3146, Rev. C. 1907; re-en. Sec. 4894, R. C. M. 1921; amd. Sec. 1, Ch. 73, L. 1967; amd. Sec. 1, Ch. 171, L. 1969.

other fee shall be charged for naturalization papers, or for the record thereof."

Effective Date

Section 2 of Ch. 171, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 28, 1969.

Amendments

The 1969 amendment substituted "all fees authorized by law" for "a fee of two dollars and fifty cents (\$2.50); and no

25-222. (4906) Penalty for false oath. Every person who takes a false oath, under the provisions of this chapter, is punishable as provided in sections 94-7-202 and 94-7-203.

History: En. Sec. 4624, Pol. C. 1895; re-en. Sec. 3157, Rev. C. 1907; re-en. Sec. 4906, R. C. M. 1921; amd. Sec. 15, Ch. 513, L. 1973.

Amendments

The 1973 amendment substituted the reference to sections 94-7-202 and 94-7-203 for a reference to 94-3801.

25-223. (4907) Penalty for failure to pay over fees. Every officer who fails or refuses to pay over any fees collected by him to the county treasurer, or fails to collect the same, as provided by this chapter, is guilty of a felony.

History: En. Sec. 4625, Pol. C. 1895; re-en. Sec. 3158, Rev. C. 1907; re-en. Sec. 4907, R. C. M. 1921; amd. Sec. 16, Ch. 513, L. 1973.

Amendments

The 1973 amendment substituted "is guilty of a felony" for "is punishable as provided in section 94-1502."

25-224. (4908) Penalty for making false report. Every officer who makes a false report of the fees received by him is guilty of a felony.

History: En. Sec. 4626, Pol. C. 1895; re-en. Sec. 3159, Rev. C. 1907; re-en. Sec. 4908, R. C. M. 1921; amd. Sec. 17, Ch. 513, L. 1973.

Amendments

The 1973 amendment deleted "as provided in section 94-115" at the end of the section.

25-225. (4909) Penalty for sheriff falsely representing his mileage. Every sheriff who falsely represents to the board of county commissioners or department of administration his actual traveling expenses in the performance of any official duty, or causes to be paid to him from the state or any county treasury a sum exceeding his actual expenses in the performance of such duty, is guilty of a misdemeanor.

History: En. Sec. 4627, Pol. C. 1895; re-en. Sec. 3160, Rev. C. 1907; re-en. Sec. 4909, R. C. M. 1921; amd. Sec. 18, Ch. 513, L. 1973; amd. Sec. 99, Ch. 326, L. 1974.

Amendments

The 1973 amendment substituted "is guilty of a misdemeanor" for "is punishable as provided in sections 94-115 and 94-1517" at the end of the section.

The 1974 amendment substituted "department of administration" in this section for "board of examiners."

25-226. (4916) Fees of sheriff. (1) For the service of summons and complaint on each defendant, two dollars (\$2);

For levying and serving each writ of attachment of execution on real or personal property, two dollars (\$2);

For service of attachment on the body or order of arrest on each defendant, two dollars (\$2);

For the service of affidavit, order, and undertaking in claim and delivery, two dollars (\$2);

For serving a subpoena, one dollar (\$1) for each witness summoned;

For serving writ of possession or restitution, four dollars (\$4);

For trial of the right of property or damages, including all services except mileage, five dollars (\$5);

For taking bond or undertaking in any case authorized by law, two dollars (\$2);

For serving every notice, rule or order, two dollars (\$2), for each person served;

For copy of any writ, process or other paper when demanded or required by law, twenty-five cents (25¢) for each page;

For advertising any property for sale on execution or under any judgment or order of sale, exclusive of cost of publication, two dollars (\$2);

(2) For the expense in taking and keeping possession of and preserving property under attachment, execution or other process, such sum as the court or judge may order, not to exceed the actual expense incurred, and no keeper must receive to exceed ten dollars (\$10) per day and no keeper must be employed without an order of court, nor must he be so employed unless the property is of such character as to need the personal attention and supervision of a keeper. No property shall be placed in charge of a keeper if it can be safely and securely stored, or where there is no reasonable danger of loss.

(3) In addition to the fees above specified, the sheriff shall receive for each mile actually traveled, in serving any writ, process, order or other paper, including a warrant of arrest, or in conveying a person under arrest before a magistrate or to jail, only his actual expenses when such travel is made by railroad, or airline, and when travel is other than by railroad, or airline, he shall receive a mileage allowance as defined in section 59-801 for each mile actually traveled by him both going and returning, and the actual expenses incurred by him in conveying a person under arrest before a magistrate or to jail, and he shall receive the same mileage and his actual expenses for the person conveyed or transported under order of court within the county, the same to be in full payment for transporting and dieting such persons during such transportation; provided that where more than one person is transported by the sheriff or when one or more papers are served on the same trip made for the transportation of one or more prisoners, but one (1) mileage shall be charged.

(4) Provided further, that this act shall not apply to the delivery of prisoners at the state prison or at the reform school, or insane persons to the state insane asylum, for which he shall receive the actual expense incurred as provided by section 16-2723 of this code. Nor shall this act apply to trips made for the return of fugitives apprehended and arrested outside the county for which the sheriff shall receive the actual necessary expenses incurred in going for and returning with such fugitive, provided that in determining the actual expense, if travel be by a privately owned vehicle, the mileage rate shall be allowed as herein provided. But no mileage must be allowed on an attachment, order of arrest, order for delivery of personal property, or any other order, notice or paper, when the same accompanies the summons, and the service thereof may be made at the time of the service of the summons, unless for the distance actually traveled beyond that required to serve the summons. When two (2) or more papers are served on the same person at the same time, or when any paper or papers are served on more than one (1) person on the same trip, but one (1) mileage must be allowed or charged, and in the service of subpoenas, but one (1) mileage must be charged when the persons named therein live in the same place or in the same direction, but mileage must be charged for the longest distance actually traveled. Any writ, order or other paper for service, must be received at any place in the county where a sheriff or a deputy is found, and mileage must be computed from such place, but if papers are delivered for service away from the county seat, all necessary copies thereof must be furnished for service. When two (2) or more officers travel in the same automobile in the discharge of any duty but one (1) mileage shall be allowed.

History: En. Sec. 4634, Pol. C. 1895; re-en. Sec. 3167, Rev. C. 1907; amd. Sec. 1, Ch. 111, L. 1919; re-en. Sec. 4916, R. C. M. 1921; amd. Sec. 1, Ch. 111, L. 1927; amd. Sec. 1, Ch. 89, L. 1929; amd. Sec. 1, Ch. 121, L. 1933; amd. Sec. 1, Ch. 139, L. 1937; amd. Sec. 4, Ch. 121, L. 1941; amd. Sec. 2, Ch. 59, L. 1949; amd. Sec. 2, Ch. 82, L. 1957; amd. Sec. 1, Ch. 343, L. 1975; amd. Sec. 8, Ch. 439, L. 1975.

Compiler's Notes

This section was amended twice in 1975, once by Ch. 343 and once by Ch. 439. Neither amendatory act mentioned the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 343, Laws of 1975, increased the fees for the following: serving summons and complaint, from \$1.00 to \$2.00; levying and serving writ of attachment of execution on property, from \$1.00 to \$2.00; serving attachment on body or order of

arrest, from \$1.00 to \$2.00; serving affidavit, order and undertaking in claim and delivery, from \$1.00 to \$2.00; serving subpoena, from 25¢ to \$1.00; serving writ of possession or restitution, from \$2.00 to \$4.00; trial of right of property or damages, from \$3.00 to \$5.00; taking bond or undertaking, from \$1.00 to \$2.00; serving notice, rule or order, from \$1.00 to \$2.00; providing copy of writ, process or other paper, from 20¢ to 25¢ per page; advertising property for sale on execution or under judgment or order of sale, from \$1.00 to \$2.00; and increased the maximum for taking and keeping property under attachment, execution or other process, from \$5.00 to \$10; inserted "or airline" after "railroad" in subsection (3); substituted "a mileage allowance as defined in section 59-801" in subsection (3) for "eleven cents (11¢) per mile"; and made minor changes in phraseology.

Chapter 439, Laws of 1975, substituted "a mileage allowance as provided in section 59-801" in subsection (3) for "eleven cents (11¢) per mile"; and made minor changes in style.

25-227, 25-228. (4886) Repealed.

Repeal

Sections 25-227 and 25-228 (Sec. 4605,

Pol. C. 1895; Sec. 1, Ch. 81, L. 1919; Secs. 1, 3, Ch. 77, L. 1943; Sec. 1, Ch.

103, L. 1949; Sec. 1, Ch. 131, L. 1951; Sec. 1, Ch. 241, L. 1969), relating to fees allowed sheriffs for the board of prisoners,

were repealed by Sec. 4, Ch. 420, Laws 1971. For present law, see sec. 16-2808.

25-229. (4910) Sheriff falsely representing his expenses for boarding prisoners. Every sheriff who falsely represents to the board of county commissioners the actual expenses of boarding prisoners, or for furnishing food and supplies therefor, or for any service rendered in connection therewith, or presents to said board false items in a claim or false vouchers, or makes any profit whatever out of the board or keeping of prisoners in his custody, and every person who gives a false item or false voucher to be used by such sheriff in any claim against the county before such board, is guilty of a misdemeanor.

History: En. Sec. 4628, Pol. C. 1895; re-en. Sec. 3161, Rev. C. 1907; re-en. Sec. 4910, R. C. M. 1921; amd. Sec. 19, Ch. 513, L. 1973.

Amendments

The 1973 amendment substituted "is guilty of a misdemeanor" for "is punishable as provided in sections 94-115 and 94-1517" at the end of the section.

25-231. (4917) Fees of county clerks. The county clerks must charge, for the use of their respective counties:

(1) For recording and indexing a written instrument allowed by law to be recorded, except as otherwise provided in this section:

(a) For the first folio, sixty cents (60¢), and for each subsequent folio or fraction of one, thirty cents (30¢);

(b) For each entry in index, twenty cents (20¢);

(c) For a certificate that an instrument has been recorded with seal affixed, one dollar (\$1);

(2) For recording and indexing each real estate mortgage, or an assignment, renewal, or release of a real estate mortgage:

(a) For each folio, forty cents (40¢);

(b) For each entry in index, twenty cents (20¢);

(c) For a certificate that the mortgage, assignment, or release has been recorded with seal affixed, one dollar (\$1);

(3) For recording and indexing each certificate of location of a quartz or placer mining claim, millsite claim, or notice of appropriation of water, including a certificate that the instrument has been recorded with seal affixed, four dollars (\$4);

(4) For recording and indexing each affidavit of annual labor on a mining claim, including certificate that the instrument has been recorded with seal affixed, two dollars (\$2) for the first mining claim in the affidavit, and fifty cents (50¢) for each additional mining claim included in it;

(5) For filing and indexing each writ of attachment, execution, certificate of sale, lien, or other instrument required by law to be filed and indexed, one dollar (\$1);

(6) For filing and indexing each certificate of incorporation or annual statement of a corporation, two dollars (\$2);

(7) For recording and platting each townsite or map:

(a) For each lot up to and including one hundred, fifty cents (50¢);

(b) For each additional lot in excess of one hundred, ten cents (10¢);

(c) For recording the field notes of survey of a townsite, per folio, fifty cents (50¢).

(8) Where recording is done by photographic or similar process the county clerk and recorder shall charge, for filing and indexing, two dollars (\$2) for each page or fraction of a page of the instrument;

(9) For a copy of a record or paper, for each folio, thirty cents (30¢) and for each certification with seal affixed, one dollar (\$1). In all cases where copies of a record or paper are to be certified by the county clerk and the copy is furnished to the clerk for certification, the clerk shall not charge a fee for the comparison of the copy, other than the fee of one dollar (\$1) for his certificate and seal;

(10) For searching an index record of files of the office, for each year when required, in abstracting or otherwise, thirty cents (30¢);

(11) For each entry of discharge or satisfaction of a mortgage, lien, or other instrument on the margin of record of it, or upon the original instrument, and noting the entry in the indexes concerned, fifty cents (50¢);

(12) For administering an oath with certificate and seal, no charge;

(13) For taking and certifying an acknowledgment, with seal affixed, for signature to it, no charge;

(14) For recording and indexing an instrument which may be recorded under section 73-104, and which pertains to land allotted to an Indian or land within an Indian reservation, except fee patents, no charge;

(15) For filing, indexing, or other services provided for by sections 87A-9-401 through 87A-9-407, the fees prescribed in those sections;

(16) For filing, recording, or indexing any other instrument not expressly provided for in this section, the same fee provided in this section for a similar service;

(17) On each instrument delivered to him for recording, the county clerk shall endorse on it all charges made for each service and the endorsement shall be recorded as a part of the instrument in his office in order that the department of community affairs may verify the charges and may see that they have been properly entered on the fee book or reception record in the county clerk's office.

History: En. Sec. 4635, Pol. C. 1895; re-en. Sec. 3168, Rev. C. 1907; amd. Sec. 1, Ch. 117, L. 1911; re-en. Sec. 4917, R. C. M. 1921; amd. Sec. 1, Ch. 87, L. 1941; amd. Sec. 1, Ch. 90, L. 1953; amd. Sec. 1, Ch. 202, L. 1955; amd. Sec. 2, Ch. 148, L. 1957; amd. Sec. 1, Ch. 9, L. 1959; amd. Sec. 11-115, Ch. 264, L. 1963; amd. Sec. 73, Ch. 348, L. 1974; amd. Sec. 32, Ch. 213, L. 1975.

Amendments

The 1974 amendment substituted "department of intergovernmental relations" for "state examiner" in subdivision (17); and made numerous changes in style, punctuation and phraseology.

The 1975 amendment substituted "department of community affairs" for "department of intergovernmental relations" in subdivision (17); and made minor changes in punctuation.

25-232. Fees of clerk of district court. (1) The clerk shall collect the following fees:

(a) at the commencement of each action or proceeding, from the plaintiff or petitioner, \$20; and for filing a complaint in intervention, from the intervenor, \$20;

- (b) from each defendant or respondent, on his appearance, \$10;
- (c) on the entry of judgment, from the prevailing party, \$10;
- (d) for preparing copies of papers on file in his office, 25 cents per page;
- (e) for each certificate or oath and jurat, with seal, 50 cents;
- (f) for oath and jurat, with seal, 50 cents;
- (g) for administering oath, 25 cents;
- (h) for taking depositions, per folio, 20 cents;
- (i) for filing and docketing a transcript of judgment or abstract of judgment from all other courts, \$5;
- (j) for issuing an execution or order of sale on a foreclosure of a lien, \$2;
- (k) for transmission of records or files or transfer of a case to another court, \$5;
- (l) for filing and entering papers received by transfer from other courts, \$10;
- (m) for issuing a marriage license, \$15;
- (n) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, \$35, which includes the fee for filing a will for probate.

(2) Forty percent of all fees collected by the clerk of the district court shall be deposited in and credited to the general fund of the county. The remaining portion of the fees shall be remitted to the state to be deposited as provided in 93-1116.

History: En. Sec. 4636, Pol. C. 1895; re-en. Sec. 3169, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1917; re-en. Sec. 4918, R. C. M. 1921; amd. Sec. 1, Ch. 218, L. 1967; amd. Sec. 1, Ch. 33, L. 1977; amd. Sec. 1, Ch. 548, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 33 and once by Ch. 548. The code commissioner has made a composite section embodying some, but not all the changes made by both amendments.

Amendments

Chapter 33, Laws of 1977, inserted subsection designations; increased the fee for marriage licenses from \$5 to \$15; and made minor changes in phraseology, punctuation and style.

Chapter 548, Laws of 1977, inserted subsection and subdivision designations; inserted "or petitioner" in subdivision (1)(a) and increased the fees specified from \$10 to \$20; inserted "or respondent" in subdivision (1)(b) and increased the fee

from \$5 to \$10; deleted "(which includes all the fees to be paid up to the entry of judgment)" at the end of subdivision (1)(b); substituted "from the prevailing party" for "in favor of plaintiff" in subdivision (1)(c) and increased the fee from \$5 to \$10; deleted the former fourth through ninth paragraphs; increased the fee in subdivision (1)(d) from 15 cents to 25 cents; inserted "or abstract of judgment" in subdivision (1)(i) and increased the fee from \$2.50 to \$5; deleted the \$1 fee for issuing execution and all services connected therewith; increased the fee in subdivision (1)(j) from \$1 to \$2; deleted the former 18th and 19th paragraphs; increased the fee in subdivision (1)(k) from \$2.50 to \$5; increased the fee in subdivision (1)(l) from \$5 to \$10; deleted the former 22nd paragraph; increased the fee in subdivision (1)(m) from \$5 to \$15; inserted subdivision (1)(n); substituted subsection (2) for the former last paragraph; and made minor changes in phraseology, punctuation and style. For prior version, see parent volume.

25-233. (4919) Repealed.

Repeal

Section 25-233 (Sec. 5, Ch. 172, L. 1969), relating to fees of clerks in probate pro-

ceedings, was repealed by Sec. 3, Ch. 548, Laws 1977.

25-236. (4922) Fees of coroner. The coroner is entitled to receive and collect for his own use the following fees:

For each day or fraction of day engaged in making an investigation relative to a death, whether an inquest is later held or not, the sum of five dollars (\$5), provided that not more than one day's fees shall be charged for making an investigation in any one case, except in counties of the first, second and third class;

For each day or fraction of day engaged in holding an inquest, five dollars (\$5), provided that not more than two days' fees shall be charged for holding an inquest in any one case;

For subpoenaing each witness, including copy of subpoena, thirty cents (30¢);

For summoning each juror, including copy of summons, thirty cents (30¢);

For each oath administered, five cents (5¢);

For making transcript of testimony, per folio, fifteen cents (15¢);

For each mile actually traveled in the performance of any duty, a mileage allowance as provided in section 59-801;

For filing papers, each five cents (5¢);

The total amount of fees allowed by the board of county commissioners to a coroner, except when acting as sheriff, must not exceed twenty-one hundred dollars (\$2100) in any one year, including compensation paid all clerks, stenographers and other clerical assistants employed by him, provided the coroner in a county having a population of forty-five thousand (45,000) or more, according to the latest federal census enumeration, may, at the discretion of the county commissioners receive a salary of not to exceed three thousand seven hundred fifty dollars (\$3,750) per year and mileage as above provided in lieu of all fees above-mentioned, and all clerical and stenographic help except as provided in section 16-3408, shall be included in such salary. Said population to be based on the latest United States census.

A justice of the peace, acting as coroner, is allowed the same fees as the coroner, and no more.

If acting as sheriff, the coroner is allowed the same fees as sheriff or constable for like services.

History: En. Sec. 4640, Pol. C. 1895; re-en. Sec. 3173, Rev. C. 1907; re-en. Sec. 4922, R. C. M. 1921; amd. Sec. 1, Ch. 59, L. 1933; amd. Sec. 1, Ch. 9, L. 1937; amd. Sec. 1, Ch. 211, L. 1951; amd. Sec. 9, Ch. 439, L. 1975.

Amendments

The 1975 amendment substituted "a mileage allowance as provided in section 59-801" for "seven cents (7¢)" for miles traveled in the performance of duty; and made minor changes in style.

25-237. (4923) Fees of public administrator. The public administrator is allowed to receive and collect for his own use, for services rendered, the same fees as are allowed personal representatives, as provided in section 91A-3-719.

History: En. Sec. 4641, Pol. C. 1895; re-en. Sec. 3174, Rev. C. 1907; re-en. Sec. 4923, R. C. M. 1921; amd. Sec. 2, Ch. 263, L. 1975.

Amendments

The 1975 amendment substituted "personal representatives, as provided in section 91A-3-719" for "executors and administrators, as provided in section 91-3407."

CHAPTER 3—FEES AND SALARIES OF JUSTICES OF THE PEACE
AND CONSTABLES

Section

- 25-301. Justice's court fees in civil actions.
 25-307. Collection and disposition of fees—itemized statement.
 25-310. Justice court costs in criminal actions.
 25-311. Remittance and retention of justice court fees.
 25-312. Compensation of constables.

25-301. (4924) Justice's court fees in civil actions. The following is the schedule of fees which shall be paid in every civil action in a justice's court:

- (1) \$5 when complaint is filed, to be paid by the plaintiff;
 - (2) \$5 when the defendant appears, to be paid by the defendant;
 - (3) \$5 to be paid by the prevailing party when judgment is rendered.
- In cases where judgment is entered by default, no charge except the \$5 for the filing of the complaint shall be made for any services, including issuing and return of execution.

(4) \$5 for all services in an action where judgment is rendered by confession;

(5) \$5 for filing notice of appeal and transcript on appeal, justifying and approving undertaking on appeal, and transmitting papers to the district court with certificate.

History: Ap. p. Sec. 4642, Pol. C. 1895; and as Sec. 1, Ch. 52, L. 1903; re-en. Secs. 3175-3176, Rev. C. 1907; superseded by Sec. 1, Ch. 55, L. 1921; re-en. Sec. 4924, R. C. M. 1921; amd. Sec. 1, Ch. 184, L. 1963; amd. Sec. 3, Ch. 420, L. 1975; amd. Sec. 1, Ch. 154, L. 1977.

Amendments

The 1975 amendment substituted "fees which shall be paid" for "fees which must be collected by justices of the peace" in the introductory clause; substituted "when complaint is filed" for "when summons is

issued" in the first schedule; substituted "when the defendant appears" for "when issue is joined" in the second schedule; substituted "filing of the complaint" for "issuance of summons" in the second sentence of the third schedule; and made minor changes in phraseology.

The 1977 amendment substituted "justice's court" for "justice court" in two places; designated the subparagraphs as (1) through (5); increased the fees authorized from \$3.50 to \$5; and made minor changes in phraseology, punctuation and style.

25-303. (4926) Repealed.**Repeal**

Section 25-303 (Sec. 4642, Pol. C. 1895; Sec. 1, Ch. 52, L. 1903; Sec. 3, Ch. 55, L. 1921; Sec. 2, Ch. 184, L. 1963), a schedule

of fees of justices of the peace in criminal actions, was repealed by Sec. 27, Ch. 491, Laws 1973. For new law, see sec. 25-310.

25-304. (4927) Repealed.**Repeal**

Section 25-304 (Sec. 4642, Pol. C. 1895; Sec. 1, Ch. 52, L. 1903; Sec. 4, Ch. 55, L.

1921), relating to miscellaneous fees, was repealed by Sec. 2, Ch. 114, Laws 1975.

25-305, 25-306. (4928, 4929) Repealed.**Repeal**

Sections 25-305, 25-306 (Sec. 4642, Pol. C. 1895; Sec. 1, Ch. 52, L. 1903; Sec. 5, Ch. 55, L. 1921; Sec. 1, Ch. 84, L. 1947; Sec. 1, Ch. 175, L. 1949; Sec. 1, Ch. 51, L. 1953; Sec. 1, Ch. 47, L. 1957; Sec. 3, Ch.

184, L. 1963; Sec. 1, Ch. 198, L. 1969), relating to salaries of and retention of fees by justices of the peace, were repealed by Sec. 27, Ch. 491, Laws 1973. For new law, see sec. 25-311.

25-307. (4930) Collection and disposition of fees—itemized statement. Each justice of the peace shall collect the fees prescribed by law for justices' courts and shall pay them into the county treasury of the county wherein he holds office, on or before the 10th day of each month, to be credited to the general fund of the county. He shall also file an itemized statement showing all fees received during the preceding month in his court. The statement shall state that all fees required by law to be paid during the preceding month in connection with matters pending before the court have been paid into the county treasury and listed in the itemized statement and that he has not received or been promised, nor has any one else received or been promised for him, any other moneys, emolument, or thing by virtue of or in connection with his office. The statement shall be subscribed and sworn to by the justice.

History: En. Sec. 2, Ch. 84, L. 1917; re-en. Sec. 4930, R. C. M. 1921; amd. Sec. 9, Ch. 491, L. 1973; amd. Sec. 4, Ch. 420, L. 1975; amd. Sec. 15, Ch. 344, L. 1977.

Amendments

The 1973 amendment deleted "in townships having a population of ten thousand people and upwards" following "Justices of the peace" at the beginning of the first sentence; deleted "except the fees in criminal actions other than for the issuance of search warrants" following "fees prescribed by law for justices of the peace" near the beginning of the first sentence; and made minor changes in style and phraseology.

The 1975 amendment substituted references to justice courts for references to justices of the peace throughout the section; changed the collection time from the first day of each month to on or before the tenth day of each month; provided for the fees to be credited to the general fund rather than the contingent funds; and made minor changes in phraseology.

The 1977 amendment deleted a former last sentence reading "This section however, shall not apply to 'miscellaneous fees' excepted by section 25-304, supra"; and made minor changes in phraseology, punctuation and style.

DECISIONS UNDER FORMER LAW

Social Security Coverage

Fees collected by salaried justices of the peace for performing marriage services were wages within the meaning of 42 U.S.C. § 409 (Social Security Act). *State v. United States*, 340 F Supp 666.

Marriages performed by justice of the

peace were employer-oriented services, marriage fees he retained were part of his overall compensation as a state employee, and therefore such fees were subject to Social Security Act employer contribution tax provisions. *State of Montana, etc. v. United States*, 489 F 2d 522.

25-309. (4932) Repealed.

Repeal

Section 25-309 (Sec. 4643, Pol. C. 1895; Sec. 1, Ch. 152, L. 1935; Sec. 1, Ch. 160,

L. 1957; Sec. 1, Ch. 278, L. 1967), relating to the constable's fees, was repealed by Sec. 10, Ch. 253, Laws 1975.

25-310. Justice court costs in criminal actions. (1) The following court costs shall be withheld by justices of the peace from accumulated fines and forfeitures in applicable criminal actions:

- (a) for each action filed, \$7.50;
- (b) for each preliminary hearing held, an additional \$7.50;
- (c) where there is a trial, an additional \$7.50.

(2) The costs listed in subsection (1) shall be withheld regardless of the court's finding or the sentence imposed.

History: En. 25-310 by Sec. 1, Ch. 289, L. 1973; amd. Sec. 5, Ch. 420, L. 1975; amd. Sec. 1, Ch. 207, L. 1977.

Title of Act

An act creating a new section to provide for fees of justices of the peace in criminal actions.

Amendments

The 1975 amendment substituted "court costs shall be withheld" for "fees shall be collected" in the preliminary clause; deleted "which shall be collected" before "from fines" in the preliminary clause; substituted "for each action filed" for "for all services rendered where there is a plea

of guilty, or forfeiture of a bond, not vacated" in subdivision (1); deleted "for all services rendered" from the beginning of subdivision (2) and substituted "an additional seven dollars and fifty cents (\$7.50)" for "fifteen dollars (\$15)" at the end of subdivision (2).

The 1977 amendment inserted the subsection (1) designation; inserted "accumulated" before "fines and forfeitures" in the introductory clause to subsection (1); redesignated former subdivision (1) as subdivision (1)(a); added subdivision (1)(b); redesignated former subdivision (2) as subdivision (1)(c); added subsection (2); and made minor changes in style and punctuation.

25-311. Remittance and retention of justice court fees. Justices of the peace shall remit to the county treasurer the fees as set forth in section 25-310.

History: En. 25-311 by Sec. 1, Ch. 287, L. 1973; amd. Sec. 1, Ch. 114, L. 1975; amd. Sec. 6, Ch. 420, L. 1975.

Compiler's Notes

This section was amended twice in 1975, once by Ch. 114 and once by Ch. 420. Neither amendatory act mentioned or included the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

when justices of the peace shall retain or remit fees.

Amendments

Chapter 114, Laws of 1975, deleted "provided however, that in all cases justices of the peace may retain the miscellaneous fees provided for in section 25-304."

Chapter 420, Laws of 1975, substituted "justice court" for "justices of the peace" in the caption.

Repealing Clause

Section 2 of Ch. 114, Laws 1975 read "Section 25-304, R. C. M. 1947, is repealed."

Title of Act

An act creating a new section providing

25-312. Compensation of constables. The board of county commissioners shall, by resolution on or before July 1 of each year, fix the salary of constables for the following fiscal year. Constables shall receive mileage, at the rate provided by law, when performing their official duties.

History: En. 25-312 by Sec. 9, Ch. 253, L. 1975.

section 25-309, R. C. M. 1947; and providing an immediate effective date.

Title of Act

An act to delete the township territorial limits on constables; to require the board of county commissioners to set salaries for constables; to make constables appointed county officers; amending sections 16-507, 16-2404, 16-2406, 16-3601, 16-3607, 16-4010, 66-205, 93-7709, R. C. M. 1947; repealing

Repealing Clause

Section 10, Ch. 253, Laws 1975 read "Section 25-309, R. C. M. 1947, is repealed."

Effective Date

Section 11, Ch. 253, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved April 7, 1975.

CHAPTER 4—JURORS' AND WITNESSES' FEES

Section

- 25-401. Jurors' fees in courts of record.
- 25-403. Jurors' fees in courts not of record and coroner's inquests.
- 25-404. Witnesses' fees.
- 25-409. Witnesses in courts not of record.
- 25-410. Witnesses in criminal actions or coroner's inquests.

25-401. (4933) Jurors' fees in courts of record. A grand or trial juror shall receive \$12 per day for attendance before any court of record and a mileage allowance, as provided in 59-801, for traveling each way between his residence and the county seat. A juror who is excused from attendance upon his own motion on the first day of his appearance in obedience to notice or who has been summoned as a special juror and not sworn in the trial of the case, in the discretion of the court, may receive per diem and mileage.

History: En. Sec. 1, Ch. 48, L. 1903; re-en. Sec. 3178, Rev. C. 1907; amd. Sec. 1, Ch. 6, L. 1917; re-en. Sec. 4933, R.C.M. 1921; amd. Sec. 1, Ch. 18, L. 1935; amd. Sec. 1, Ch. 9, L. 1945; amd. Sec. 1, Ch. 117, L. 1963; amd. Sec. 1, Ch. 332, L. 1971; amd. Sec. 10, Ch. 439, L. 1975; amd. Sec. 16, Ch. 344, L. 1977.

Amendments

The 1971 amendment increased the

jurors' fees in courts of record from \$10 to \$12 per day; and made a minor change in style.

The 1975 amendment substituted "a mileage allowance as provided in section 59-801" for "eight cents (8¢) per mile."

The 1977 amendment substituted "each way between his" for "from and to their"; and made minor changes in phraseology, punctuation and style.

25-403. (4935) Jurors' fees in courts not of record and coroner's inquests. Jurors in courts not of record, in both civil and criminal actions, shall receive a fee of \$7.50 per day. In civil actions, the jurors' fees must be paid by the party demanding the jury and taxed as costs against the losing party. Jurors in coroner's inquests shall receive a fee of \$7.50 per day.

History: En. Sec. 4647, Pol. C. 1895; re-en. Sec. 3181, Rev. C. 1907; re-en. Sec. 4935, R. C. M. 1921; amd. Sec. 1, Ch. 206, L. 1947; amd. Sec. 1, Ch. 154, L. 1969; amd. Sec. 2, Ch. 332, L. 1971; amd. Sec. 17, Ch. 344, L. 1977.

Amendments

The 1969 amendment increased jurors' compensation from \$3. to \$5. a day.

The 1971 amendment increased the jurors' fees from \$5.00 to \$7.50 per day.

The 1977 amendment twice inserted "a fee of"; substituted "jurors' fees" for "jury"; deleted "for their services" after "receive" in the last sentence; and made minor changes in phraseology, punctuation and style.

25-404. (4936) Witnesses' fees. For attending in any civil or criminal action or proceeding before any court of record, referee, or officer authorized to take depositions, or commissioners to assess damages or otherwise, for each day, ten dollars (\$10). For mileage in traveling to the place of trial or hearing, each way, for each mile, a mileage allowance as provided in section 59-801; provided, however, that no officer of the United States, the state of Montana, or of any county, incorporated city or town within the limits of the state of Montana shall receive any per diem when testifying in a criminal proceedings, and that no witness shall receive fees in any more than one criminal case on the same day.

History: En. Sec. 4648, Pol. C. 1895; re-en. Sec. 3182, Rev. C. 1907; re-en. Sec. 4936, R.C.M. 1921; amd. Sec. 2, Ch. 18, L. 1935; amd. Sec. 2, Ch. 117, L. 1963; amd. Sec. 3, Ch. 332, L. 1971; amd. Sec. 11, Ch. 439, L. 1975.

Amendments

The 1971 amendment increased the witnesses' fees from \$6 to \$10 per day; and made minor changes in style and phraseology.

The 1975 amendment substituted "a mileage allowance as provided in section 59-801" for "eight cents (\$.08)."

25-409. (4941) Witnesses in courts not of record. Witnesses in courts not of record in civil actions and proceedings shall receive three dollars (\$3) for each day's actual attendance, and mileage as provided in section 59-801 for each mile actually traveled in going from his residence by the usual traveled route to the said court and return.

History: En. Sec. 3, Ch. 48, L. 1903; re-en. Sec. 3186, Rev. C. 1907; re-en. Sec. 4941, R.C.M. 1921; amd. Sec. 3, Ch. 18, L. 1935; amd. Sec. 4, Ch. 332, L. 1971; amd. Sec. 7, Ch. 420, L. 1975.

Amendments

The 1971 amendment increased witnesses' fees from \$1.50 to \$3 per day; and made a minor change in style.

The 1975 amendment substituted "mileage as provided in section 59-801" for "seven cents (\$.07)."

25-410. (4942) Witnesses in criminal actions or coroner's inquests. Witnesses in courts not of record in criminal actions and on coroner's inquests shall receive three dollars (\$3) per day for actual attendance, and mileage as provided in section 59-801 for each mile actually and necessarily traveled from his place of residence to the said court and return.

History: En. Sec. 4, Ch. 48, L. 1903; re-en. Sec. 3187, Rev. C. 1907; re-en. Sec. 4942, R.C.M. 1921; amd. Sec. 4, Ch. 18, L. 1935; amd. Sec. 5, Ch. 332, L. 1971; amd. Sec. 8, Ch. 420, L. 1975.

Amendments

The 1971 amendment increased witnesses' fees from \$1.50 to \$3 per day; and made a minor change in style.

The 1975 amendment substituted "mileage as provided in section 59-801" for "seven cents (\$.07) per mile."

CHAPTER 5—SALARIES OF STATE OFFICERS, DEPUTIES AND EMPLOYEES

Section

- 25-501. Salaries of certain elected state officials.
- 25-507.1. Central payroll system for state agencies authorized—state auditor to provide for inclusion of agencies—exceptions.
- 25-507.2. Payroll periods—pay dates—uniformity of dates—dates to be within ten days after close of payroll period.
- 25-507.3. Payroll period not to be changed because of central system except upon sixty days' notice.
- 25-507.4. Payroll roster mandatory—roster of established positions authorized—persons to be included on payroll roster.
- 25-507.5. Payroll roster certifications by appointing powers—reliance on certifications and attendance reports.
- 25-507.6. Duplicate warrants authorized—charge for loss—when considered lost.
- 25-507.7. Designation of person to receive warrants upon employee's death—re-issuance of warrant in designated person's name.
- 25-507.8. Creation of state payroll revolving account in state treasury—state auditor to determine disbursements and transfers.
- 25-507.9. Determination of weekly or hourly pay rate.
- 25-507.10. Service charges—use of funds so collected.
- 25-508. Traveling expenses of officers attending conventions.

25-501. Salaries of certain elected state officials. The annual salaries paid to certain elected officials of the state of Montana are:

Governor	\$35,000
Lieutenant governor	\$25,000
Chief justice of the supreme court	\$37,000
Justices of the supreme court, each	\$36,000
Attorney general	\$32,500
State auditor	\$22,500

Superintendent of public instruction	\$27,500
Public service commissioners	\$25,000
Secretary of state	\$22,500
Clerk of the supreme court	\$20,000

History: En. Sec. 1, Ch. 202, L. 1959; amd. Sec. 2, Ch. 187, L. 1961; amd. Sec. 1, Ch. 212, L. 1963; amd. Sec. 1, Ch. 308, L. 1967; amd. Sec. 1, Ch. 323, L. 1969; amd. Sec. 1, Ch. 314, L. 1971; amd. Sec. 4, Ch. 297, L. 1973; amd. Sec. 22, Ch. 315, L. 1974; amd. Sec. 1, Ch. 377, L. 1974; amd. Sec. 2, Ch. 461, L. 1977.

Amendments

The 1969 amendment substituted "certain" for "various" before "elected officials" and increased annual salaries as follows: chief justice from \$18,500 to \$22,500; justices from \$17,000 to \$21,000; railroad commissioners from \$10,500 to \$11,550; and clerk of the supreme court from \$9,000 to \$11,500.

The 1971 amendment increased the annual salaries of the governor from \$23,250 to \$25,000; of the chief justice from \$22,500 to \$24,000; of the other supreme court justices from \$21,000 to \$22,500; of the attorney general from \$15,500 to \$19,000; of the state auditor from \$10,500 to \$15,000; of the superintendent of public instruction from \$13,750 to \$17,500; of the railroad commissioner from \$11,550 to \$14,000; of the state treasurer from \$10,500 to \$15,000; and of the secretary of state from \$10,500 to \$15,000.

The 1973 amendment inserted the provision for the lieutenant governor's salary.

Chapter 315, Laws of 1974, substituted "public service commissioners" for "railroad commissioner."

Chapter 377, Laws of 1974, increased the annual salaries of the governor from

\$25,000 to \$30,000; of the lieutenant governor from \$18,500 to \$20,500; of the chief justice from \$24,000 to \$28,000; of the other supreme court justices from \$22,500 to \$27,000; of the attorney general from \$19,000 to \$25,000; of the state auditor from \$15,000 to \$18,000; of the superintendent of public instruction from \$17,500 to \$20,000; of the railroad commissioner [public service commissioners] from \$14,000 to \$18,000; of the state treasurer from \$15,000 to \$18,000; of the secretary of state from \$15,000 to \$18,000; and of the clerk of the supreme court from \$11,500 to \$14,000.

The 1977 amendment increased salaries of the governor from \$30,000 to \$35,000, the lieutenant governor from \$20,500 to \$25,000, the chief justice of the supreme court from \$28,000 to \$37,000, the justices of the supreme court from \$27,000 to \$36,000, the attorney general from \$25,000 to \$32,500, the state auditor from \$18,000 to \$22,500, the superintendent of public instruction from \$20,000 to \$27,500, the public service commissioners from \$18,000 to \$25,000, the secretary of state from \$18,000 to \$22,500, the clerk of the supreme court from \$14,000 to \$20,000; deleted a provision that the state treasurer receive \$18,000; and made a minor change in phraseology.

Cross-References

Classification and compensation of state employees, secs. 59-903 to 59-914.

Salaries of elective and judicial officers, commission to study and recommend, secs. 59-1401 to 59-1404.

25-504. (439) Repealed.

Repeal

Section 25-504 (Sec. 1, Ch. 71, L. 1919; Sec. 1, Ch. 124, L. 1925; Sec. 1, Ch. 4, L. 1929; Sec. 1, Ch. 43, L. 1943), relating to

salaries of state janitors, watchmen, engineers, and carpenters, was repealed by Sec. 103, Ch. 326, Laws of 1974.

25-507.1. Central payroll system for state agencies authorized—state auditor to provide for inclusion of agencies—exceptions. The state auditor shall install and operate a uniform state central payroll system for all state agencies. The auditor may provide for the orderly inclusion of state agencies into such system, and may make exceptions from the operation thereof for such periods as he determines necessary. By January 1, 1979, all state central payroll systems shall be based upon actual payroll figures submitted after the end of the payroll period and may not be based upon estimated payroll.

History: En. Sec. 1, Ch. 95, L. 1969;
amd. Sec. 1, Ch. 51, L. 1977.

Amendments

The 1977 amendment added the last sentence.

Title of Act

An act providing for the establishment and operation of a state central payroll system.

25-507.2. Payroll periods—pay dates—uniformity of dates—dates to be within ten days after close of payroll period. All state payroll systems shall provide for the fixing of payroll periods and designated days on which salaried employees shall be paid for the preceding payroll period. Such pay date shall be uniform for all employees of each state agency employed in the same geographic area and payroll warrants shall be distributed or mailed within 10 business days following the close of the payroll period.

History: En. Sec. 2, Ch. 95, L. 1969;
amd. Sec. 2, Ch. 51, L. 1977.

“payroll warrants shall be distributed or mailed within ten business days” for “shall not be more than ten (10) calendar days” near the end of the second sentence; and made minor changes in phraseology and style.

Amendments

The 1977 amendment substituted “shall provide” for “may provide” near the beginning of the first sentence; substituted

25-507.3. Payroll period not to be changed because of central system except upon sixty days’ notice. The payroll period of employees of a state agency shall not be changed by inclusion of the agency into the state central payroll system, or by any revision or modification of the system, unless notice of the proposed change has been given to each employee, who will be affected by such change in the form and manner prescribed by the state auditor not less than sixty (60) days prior to the effective date of the change.

History: En. Sec. 3, Ch. 95, L. 1969.

25-507.4. Payroll roster mandatory—roster of established positions authorized—persons to be included on payroll roster. The state auditor shall establish and maintain a payroll roster of all persons employed by every state agency and may establish and maintain a roster of all established positions. The payroll roster shall include both merit system and exempt employees, but shall not necessarily include emergency appointees, or the equivalent.

History: En. Sec. 4, Ch. 95, L. 1969.

25-507.5. Payroll roster certifications by appointing powers—reliance on certifications and attendance reports. Each appointing power shall correctly and promptly certify to the state auditor all changes, modifications, additions and deletions to the payroll roster in compliance with all applicable merit service, fiscal, and other pertinent laws, rules, and regulations. The state central payroll system shall disburse or otherwise act in reliance upon all payroll roster certifications and attendance reports certified to the state auditor by the respective appointing powers.

History: En. Sec. 5, Ch. 95, L. 1969.

25-507.6. Duplicate warrants authorized—charge for loss—when considered lost. Upon receipt of proof, satisfactory to the state auditor, that a payroll warrant issued by the state auditor has been lost or destroyed prior to its delivery to the employee to whom it is payable, the state auditor shall, upon certification by the payee's appointing power, issue a duplicate warrant in payment of the same amount, without requiring a bond from the payee and any loss incurred in connection therewith, shall be charged against the account from which the payment was derived. A payroll warrant shall be considered to have been lost if it has been sent to the payee, but not received by him within a reasonable time, consistent with the policy of prompt payment of employees, or if it has been sent to a state officer or employee for delivery to the payee, or for forwarding to another state officer or employee for such delivery, and has not been received within such reasonable time.

History: En. Sec. 6, Ch. 95, L. 1969.

25-507.7. Designation of person to receive warrants upon employee's death—re-issuance of warrant in designated person's name. Any person now or hereafter employed by the state may file with his appointing power a designation of a person, who, notwithstanding any other provision of law, shall, on the death of the employee, be entitled to receive all warrants that would have been payable to the decedent had he survived. The employee may change the designation from time to time. A person so designated shall claim such warrants from the state auditor and on sufficient proof of identity, the state auditor shall re-issue the warrant in the name of the designated person and deliver said warrant to the designated person.

History: En. Sec. 7, Ch. 95, L. 1969.

25-507.8. Creation of state payroll revolving account in state treasury—state auditor to determine disbursements and transfers. An account in the revolving fund of the state treasury is hereby created, to be known as the state payroll revolving account, which account may be utilized for the payment of compensation to officers and employees of the state and all amounts withheld therefrom, pursuant to law. The amount to be disbursed from the state payroll revolving account at any time shall be determined by the state auditor, and on his order, shall be transferred forthwith from the fund, account, and appropriation otherwise properly chargeable therewith, to the state payroll revolving account.

History: En. Sec. 8, Ch. 95, L. 1969.

25-507.9. Determination of weekly or hourly pay rate. When the monthly or annual salary rate payable to an officer or employee of the state has been set by law or otherwise, notwithstanding any other provision of law, the weekly or hourly rate of pay shall be determined by dividing the annual salary by 52 weeks, or 2080 hours.

History: En. Sec. 9, Ch. 95, L. 1969.

25-507.10. Service charges—use of funds so collected. The state auditor may provide for a system of charges for services rendered by the state central payroll system to any department or agency of the state. Funds

collected under this section shall be deposited to the credit of a revolving fund account and expended for the purpose of paying the expenses incurred by the state central payroll system.

History: En. Sec. 10, Ch. 95, L. 1969.

25-508. (443) Traveling expenses of officers attending conventions. (1) to (5). * * * [Same as parent volume.]

(6) Provided, further, that all county treasurers of the various counties throughout the state of Montana shall be allowed actual transportation expenses and per diem allowance for attendance upon any general meeting of the Montana association of county treasurers held within the state, not oftener than once a year, and the proportionate expenses and charges against each county as a member of such association shall be paid by such county.

History: En. Sec. 1, Ch. 241, L. 1921; 1963; amd. Sec. 1, Ch. 79, L. 1965; amd. re-en. Sec. 443, R. C. M. 1921; amd. Sec. 1, Sec. 1, Ch. 66, L. 1967; amd. Sec. 1, Ch. 124, L. 1923; amd. Sec. 1, Ch. 48, L. 174, L. 1967; amd. Sec. 1, Ch. 182, L. 1927; amd. Sec. 1, Ch. 86, L. 1931; amd. 1973. |
Sec. 1, Ch. 130, L. 1933; amd. Sec. 1, Ch. 119, L. 1943; amd. Sec. 1, Ch. 58, L. 1949; **Amendments**
amd. Sec. 1, Ch. 184, L. 1957; amd. Sec. The 1973 amendment added subsection 11, Ch. 80, L. 1961; amd. Sec. 1, Ch. 85, L. (6).

CHAPTER 6—SALARIES OF COUNTY OFFICERS, DEPUTIES AND EMPLOYEES

Section

25-604. County commissioners to fix salaries of deputies—limitations.

25-605. Salaries of certain county officers.

25-609.1. Commissioners to fix salaries according to salary schedule.

25-604. (4874) County commissioners to fix salaries of deputies—limitations. That the boards of county commissioners in the several counties in the state shall have the power to fix the compensation allowed any deputy or assistant mentioned in the preceding section except as herein provided; provided the salary of no deputy or assistant shall be more than ninety per cent (90%) of the salary of the officer under whom such deputy or assistant is serving; except as herein provided; where any deputy or assistant is employed for a period of less than one (1) year the compensation of such deputy or assistant shall be for the time so employed; provided, the rate of such compensation shall not be in excess of the rates now provided by law for similar deputies and assistants, except as herein provided; said boards of county commissioners shall likewise have the power to fix and determine the number of deputy county officers and allow to the several county officers a greater or less number of deputies or assistants, than the maximum number allowed by law, when in the judgment of the board of county commissioners such greater or less number of deputies is or is not needed for the faithful and prompt discharge of the duties of any county office; provided that after this act becomes effective the maximum salary rate per month of any deputy or assistant should not be less than the maximum salary allowed in any month of the year immediately previous to the date this act becomes effective. In fixing the compensation allowed the undersheriff the board must fix the same ninety-five per cent (95%) of the salary of the officers under whom such undersheriff is serving; in fixing the compensa-

tion allowed the deputy sheriffs the board must fix the same at ninety per cent (90%) of the salary of the officer under whom such deputy sheriff is serving, except in counties of the first, second, or third class in which the board must fix the same at not less than seventy-five per cent (75%) nor more than ninety per cent (90%) of the salary of the officer under whom such deputy sheriff is serving; provided, however, that no deputy sheriff presently employed may be paid less than the compensation he is receiving on the effective date of this act.

History: En. Sec. 2, Ch. 222, L. 1919; amd. Sec. 1, Ch. 204, L. 1921; re-en. Sec. 4874, R.C.M. 1921; amd. Sec. 1, Ch. 82, L. 1923; amd. Sec. 1, Ch. 87, L. 1943; amd. Sec. 1, Ch. 151, L. 1945; amd. Sec. 1, Ch. 47, L. 1947; amd. Sec. 1, Ch. 136, L. 1951; amd. Sec. 1, Ch. 365, L. 1971.

Amendments

The 1971 amendment added to the language following the semicolon in the last sentence the exception and the proviso relating to first, second and third class

counties; and made a minor change in phraseology.

Conflict with Minimum Wage Act

Because the legislature amended this section the same year it enacted the Minimum Wage Act (41-2301 to 41-2307), it has indicated its intent to keep this section specially enforced; and inasmuch as the time-and-a-half provision of the Minimum Wage Act conflicts with the maximum salary stated by this section, this special section will control the general provision of that act. City of Billings v. Smith, 158 M 197, 490 P 2d 221.

25-605. Salaries of certain county officers. The salaries of county treasurers, clerk and recorder, clerk of the court, county attorneys, sheriffs, county assessors, county superintendents of schools, and of county surveyors in counties where county surveyors now receive salaries as provided in 16-3302, shall be based on the population and taxable valuation of the county as of January 1, 1977, in accordance with the following schedule:

Population of County	Salary Col. A
Below 3,000	\$ 4,494
3,000 to 3,999	\$ 4,729
4,000 to 4,999	\$ 4,833
5,000 to 5,999	\$ 4,938
6,000 to 6,999	\$ 5,058
7,000 to 7,999	\$ 5,394
8,000 to 8,999	\$ 5,407
9,000 to 9,999	\$ 5,617
10,000 to 12,499	\$ 5,708
12,500 to 14,999	\$ 5,826
15,000 to 17,499	\$ 5,943
17,500 to 19,999	\$ 6,048
20,000 to 24,999	\$ 6,165
25,000 to 29,999	\$ 6,270
30,000 to 39,999	\$ 6,387
40,000 to 49,999	\$ 6,544

COUNTY OFFICERS, DEPUTIES AND EMPLOYEES

25-605

50,000 to 59,999	\$ 6,779
60,000 to 69,999	\$ 7,014
70,000 to 79,999	\$ 7,275
80,000 to 89,999	\$ 7,432
90,000 to 99,999	\$ 7,676
100,000 and over	\$ 7,902

Taxable Valuation of County	Salary Col. B
Below \$2,000,000	\$ 4,598
\$2,000,000 to 2,999,999	\$ 4,729
3,000,000 to 3,999,999	\$ 4,833
4,000,000 to 4,999,999	\$ 4,938
5,000,000 to 5,999,999	\$ 5,069
6,000,000 to 6,999,999	\$ 5,394
7,000,000 to 7,999,999	\$ 5,487
8,000,000 to 9,999,999	\$ 5,617
10,000,000 to 11,999,999	\$ 5,708
12,000,000 to 13,999,999	\$ 5,826
14,000,000 to 15,999,999	\$ 5,942
16,000,000 to 17,999,999	\$ 6,047
18,000,000 to 19,999,999	\$ 6,165
20,000,000 to 22,499,999	\$ 6,270
22,500,000 to 24,999,999	\$ 6,387
25,000,000 to 29,999,999	\$ 6,544
30,000,000 to 34,999,999	\$ 6,779
35,000,000 to 39,999,999	\$ 7,014
40,000,000 to 44,999,999	\$ 7,275
45,000,000 to 49,999,999	\$ 7,432
50,000,000 to 54,999,999	\$ 7,667
55,000,000 to 59,999,999	\$ 7,902
60,000,000 to 64,999,999	\$ 8,138
65,000,000 to 69,999,999	\$ 8,372
70,000,000 to 74,999,999	\$ 8,607
75,000,000 to 79,999,999	\$ 8,843
80,000,000 to 84,999,999	\$ 9,078
85,000,000 to 89,999,999	\$ 9,313
90,000,000 to 94,999,999	\$ 9,548
95,000,000 to 99,999,999	\$ 9,783
100,000,000 to 109,999,999	\$10,019
110,000,000 to 119,999,999	\$10,195
120,000,000 to 129,999,999	\$10,398
130,000,000 to 139,999,999	\$10,606
140,000,000 to 149,999,999	\$10,817
150,000,000 and over	\$11,035

The total salary paid to county treasurers, clerk and recorder, clerk of the court, county attorneys, sheriffs, county assessors, county superintendents of schools and county sheriffs, and county surveyors in counties where county surveyors receive salaries, as provided in 16-3302, shall be

the sum of the salary shown in column A based on population when added to the salary shown in column B based on taxable valuation; provided, however, that county superintendent of schools shall receive, in addition to the salary based upon the totals of columns A and B above, the sum of \$400 per year and county sheriffs and county attorneys shall receive, in addition to the salary based upon the totals of columns A and B above, the sum of \$1,200 per year. Notwithstanding the above, in each county with a population in excess of 30,000 the salary of the county attorney shall be \$30,000 per year.

History: En. Sec. 1, Ch. 150, L. 1945; amd. Sec. 1, Ch. 177, L. 1949; amd. Sec. 1, Ch. 118, L. 1951; amd. Sec. 1, Ch. 222, L. 1953; amd. Sec. 1, Ch. 22, L. 1957; amd. Sec. 1, Ch. 66, L. 1959; amd. Sec. 1, Ch. 195, L. 1961; amd. Sec. 1, Ch. 216, L. 1965; amd. Sec. 1, Ch. 231, L. 1967; amd. Sec. 1, Ch. 284, L. 1969; amd. Sec. 1, Ch. 265, L. 1971; amd. Sec. 10, Ch. 391, L. 1973; amd. Sec. 1, Ch. 474, L. 1973; amd. Sec. 1, Ch. 331, L. 1974; amd. Sec. 3, Ch. 102, L. 1975; amd. Sec. 1, Ch. 195, L. 1975; amd. Sec. 1, Ch. 493, L. 1977.

Amendments

The 1969 amendment substituted references to section 16-3302 for references to repealed section 32-303; raised all the salary bases in the schedule; and in the final paragraph, inserted "and county sheriffs" before "and county surveyors."

The 1971 amendment raised all the salary bases in the schedule; added the last five items in the schedule headed "Taxable Valuation of County"; and inserted "and county sheriffs" in the proviso to the final paragraph.

Chapter 391, Laws of 1973, deleted "county assessors" following "sheriffs" in both the preliminary clause and final paragraph.

Chapter 474, Laws of 1973, increased the compensation on each level of the schedule by from \$460 to \$790 for each item; deleted "and county sheriffs" following "county superintendent of schools" near the beginning of the proviso in the final paragraph; and added to the final paragraph the clause giving the sheriff \$1,200 extra per year and the final sentence relating to county attorneys in large counties.

The 1974 amendment inserted the reference to county attorneys in the provision in the final paragraph relating to \$1200 per year.

Chapter 102, Laws of 1975, increased the annual salary of the county attorney from \$16,000 to \$25,000; and made minor changes in phraseology.

Chapter 195, Laws of 1975, increased all salary levels contained in columns A and B from a minimum of \$565 to a maximum of \$3,058; and made minor changes in style.

The 1977 amendment inserted "county assessors" in the first and last paragraphs; inserted "as of January 1, 1977" in the first paragraph; increased the salary levels contained in Column A from a minimum of \$409 to a maximum of \$718; increased the salary levels in Column B from a minimum of \$418 to a maximum of \$911; added to Column B all items starting with "110,000,000 to 119,999,999"; increased the salary of county attorneys in the last sentence from \$25,000 to \$30,000; and made minor changes in style.

Effective Dates

Section 2 of Ch. 195, Laws of 1975, read "One-half ($\frac{1}{2}$) of the total salary increases provided for in section 1 shall be effective July 1, 1975, and the remainder of such increases shall be effective July 1, 1976."

Section 2 of Ch. 493, read "One-half of all salary increases provided for in section 1 shall be effective July 1, 1977, and the remainder of such increases shall be effective July 1, 1978."

DECISIONS UNDER FORMER LAW

Constitutional Limitation

Article V, section 31 of the 1889 constitution absolutely barred increases or decreases in salary during term of office, so that county officers elected or appointed before enactment of the 1969 amendment

to this section were not entitled to raises in salaries or emoluments provided thereby. *Shubat v. State*, 157 M 143, 484 P 2d 278; *Brown v. Board of County Comrs. of Galatin County*, — M —, 529 P 2d 358.

25-609. Repealed.

Repeal

Section 25-609 (Sec. 5, Ch. 150, L. 1945;

Sec. 1, Ch. 177, L. 1949; Sec. 4, Ch. 222, L. 1953; Sec. 1, Ch. 98, L. 1963), relating

to the annual establishment of salaries by the county commissioners, was repealed by Sec. 2, Ch. 306, Laws 1973. For new law,

see sec. 25-609.1. Chapter 391, Laws of 1973 purported to amend this section but was void under section 43-515.

25-609.1. Commissioners to fix salaries according to salary schedule. The county commissioners shall, by resolution on or before July 1 of each year, fix the salaries of the county treasurer, county clerk, county assessor, county school superintendent, county sheriff, county attorney, clerk of the district court for the following fiscal year in conformity with the appropriate statutory salary schedule pertaining to each office. The salary schedule used for each office shall be the statutory schedule in effect on the first day of the following fiscal year.

History: En. Sec. 1, Ch. 306, L. 1973.

Title of Act

An act directing county commissioners to fix salaries of certain county officers annually according to statutory schedules; repealing section 25-609, R. C. M. 1947.

Repealing Clause

Section 2 of Ch. 306, Laws 1973 read "Section 25-609, R. C. M. 1947, is repealed."

Duty of Commissioners

The commissioners have a clear legal duty to compute taxable valuation used for fixing salaries prior to July 1 of each year, although the deadline for reporting

their computations to the state department of revenue is the second Monday in July. *Brown v. Board of County Comrs. of Gallatin County*, — M —, 529 P 2d 358.

Removal of Influence

To allow the taxable valuation to be determined either before or after the date of the fixing of these salaries would open up the possibility of exerting influence by increase or decrease of salary, and by choosing the specific date of July 1, the legislature has attempted to make all changes consistent with the start of the county fiscal year. *Brown v. Board of County Comrs. of Gallatin County*, — M —, 529 P 2d 358.

25-611. Effective date—existing officeholders unaffected.

Compiler's Notes

Section 25-609, included in the references in the text in the parent volume to

sections 25-605 to 25-609, was repealed by Sec. 2, Ch. 306, Laws 1973. For new law, see sec. 25-609.1.

TITLE 26—FISH AND GAME

Chapter

1. Fish and game commission, director and wardens—creation—powers and duties, 26-101.1, 26-103, 26-103.1, 26-104, 26-104.3 to 26-104.9, 26-106.3, 26-107 to 26-109.1, 26-110 to 26-110.3, 26-114, 26-115, 26-117 to 26-119, 26-121, 26-123, 26-125, 26-132 to 26-134, 26-136 to 26-138.
2. Fishing and hunting licenses, 26-201 to 26-202.3, 26-202.5 to 26-202.8, 26-204, 26-210, 26-213, 26-215, 26-217, 26-220 to 26-223, 26-228 to 26-234.
3. Restrictions on taking fish and game—open and closed seasons, 26-301, 26-301.1, 26-302, 26-303, 26-303.5, 26-306, 26-307, 26-307.2, 26-307.3, 26-315, 26-317, 26-319, 26-324, 26-330 to 26-333, 26-344, 26-345.
4. Beaver—trapping—license—protection, 26-402.
5. Protection of certain wild birds—sale of confiscated birds and animals, 26-501, 26-501.1, 26-503, 26-504, 26-506, 26-507, 26-509, 26-512.
7. Shipment of animals from state, 26-701, 26-704, 26-705, 26-708.
8. Miscellaneous prohibitions, 26-801, 26-802, 26-804, 26-805, 26-809, 26-811 to 26-814.
9. Outfitters and guides—taxidermists, 26-904, 26-906 to 26-908, 26-911 to 26-921.
10. Disposal of fines—duties of courts—exceptions from act, 26-1001, 26-1002, 26-1006, 26-1008.
11. Game preserves, migratory bird reservations, 26-1101, 26-1102, 26-1128.
12. Permits for breeding game birds and animals—other regulations, 26-1201, 26-1205 to 26-1212.
13. Fur dealer's license and regulation, 26-1302, 26-1303, 26-1306.
15. Construction and hydraulic projects affecting fish and game, 26-1505, 26-1507 to 26-1523.
17. Importation of salmonid fish or eggs, 26-1701, 26-1702, 26-1704, 26-1705.
18. Endangered species, 26-1801 to 26-1809.

CHAPTER 1—FISH AND GAME COMMISSION, DIRECTOR AND WARDENS— CREATION—POWERS AND DUTIES

Section

- 26-101.1. Definitions.
- 26-103. Meetings.
- 26-103.1. Powers of the commission.
- 26-104. Powers and duties of department.
- 26-104.3. Fixing of general and special seasons and bag and possession limits.
- 26-104.4. Acquisition, importation, and propagation of fish, game, game birds, and fur-bearing animals—introduction and propagation of waterfowl food.
- 26-104.5. Construction and maintenance of fish hatcheries and fish ladders.
- 26-104.6. Acquisition and sale of lands or waters by department.
- 26-104.7. Co-operative research, training, and other projects—educational and biological programs.
- 26-104.8. Creation of fish and game refuges.
- 26-104.9. Regulation of use of lands.
- 26-106.3. Director to carry out policies.
- 26-107. State fish and game wardens—appointment—qualifications.
- 26-108. Employees of the department—removal—rating—salaries—expenses.
- 26-109. Political activity prohibited.
- 26-109.1. Grievance procedure.
- 26-110. Qualifications, powers, and duties of wardens.
- 26-110.1. Protection of private property by fish and game wardens—ex officio fire wardens.
- 26-110.2. Power of wardens in protection of private property.
- 26-110.3. Enforcement powers of wardens.
- 26-114. Appointment of ex officio state fish and game wardens.
- 26-115. State fish hatcheries.
- 26-117. Powers and duties of department pertaining to state fisheries.
- 26-118. Department may control state waters for propagation of fish.
- 26-119. Department and commission to procure plans for construction projects.
- 26-121. State fish and game moneys.

- 26-123. Salaries, per diem and expenses, how paid.
- 26-125. Publication of laws.
- 26-132. Authority for department to make agreement with Indians concerning hunting and fishing.
- 26-133. Payments to counties for department-owned land—exceptions.
- 26-134. Allocation of funds to school districts.
- 26-136. Meat of wild animals so killed—disposition.
- 26-137. Checking stations.
- 26-138. Inspection of animals and fish at checking station.

26-101. (3650) Repealed.

Repeal

Section 26-101 (Sec. 1, Ch. 193, L. 1921; Sec. 1, Ch. 166, L. 1941), creating the

fish and game commission, was repealed by Sec. 58, Ch. 511, Laws 1973. For new law, see sec. 82A-2004.

26-101.1. Definitions. Unless the context requires otherwise, in Title 26 the following definitions apply:

(1) "Department" means the department of fish and game provided for in Title 82A, chapter 20.

(2) "Director" means the director of fish and game provided for in section 82A-2001.

(3) "Warden" means a state fish and game warden.

(4) "Commission" means the fish and game commission provided for in section 82A-2004.

History: En. 26-101.1 by Sec. 1, Ch. 511, L. 1973; amd. Sec. 3, Ch. 417, L. 1977.

Title of Act

An act for the codification and general revision of the laws relating to the department of fish and game.

Amendments

The 1977 amendment substituted "82A-2001" at the end of subdivision (2) for "82A-2003"; deleted "state" before "fish and game commission" in subdivision (4); and made minor changes in phraseology and punctuation.

26-102. (3651) Repealed.

Repeal

Section 26-102 (Sec. 2, Ch. 193, L. 1921; Sec. 2, Ch. 166, L. 1941; Sec. 1, Ch. 29, L. 1965; Sec. 46, Ch. 177, L. 1965), re-

lating to districts for appointment of members of the fish and game commission, was repealed by Sec. 58, Ch. 511, Laws 1973.

26-103. (3652) Meetings. The members of the commission shall hold quarterly or other meetings for the transaction of business, at times and places it considers necessary and proper. The meetings shall be called by the chairman, or by a majority of the commission, and shall be held at the time and place specified in the call for the meeting. A majority of the members of the commission shall constitute a quorum for the transaction of any business which may come before it. The commission shall keep a record of all the business transacted by it. The chairman and secretary shall sign all orders, minutes, or documents for the commission. The principal offices of the commission and department shall be located in or near Helena and suitable and adequate space therefor together with janitor services, light, heat and water shall be furnished by the state of Montana. Rental shall be charged therefor at a rate not to exceed four dollars (\$4) per square foot per year for the total space occupied. Such rental collected shall be deposited to the credit of the state general fund.

History: En. Sec. 3, Ch. 193, L. 1921; re-en. Sec. 3652, R. C. M. 1921; amd. Sec. 1, Ch. 77, L. 1923; amd. Sec. 1, Ch. 192, L. 1925; amd. Sec. 1, Ch. 114, L. 1945; amd. Sec. 1, Ch. 52, L. 1957; amd. Sec. 1, Ch. 119, L. 1959; amd. Sec. 23, Ch. 271, L. 1963; amd. Sec. 2, Ch. 511, L. 1973.

Amendments

The 1973 amendment deleted "shall within thirty (30) days after their appointment and annually thereafter meet and organize by electing from its membership a chairman" from the first sentence following "The members of the commis-

sion"; inserted "department" near the beginning of the sixth sentence; substituted "in or near Helena" for "near the capitol building in Helena" near the beginning of the sixth sentence; increased the rental rate specified in the seventh sentence from \$2.00 to a maximum of \$4.00 per square foot per year; deleted a next to last sentence reading "Such charge to the commission shall be in effect until such time as the commission shall provide other building or buildings"; and made minor changes in style and phraseology.

26-103.1. Powers of the commission. The commission shall:

(1) set the policies for the protection, preservation, and propagation of the wildlife, fish, game, furbearers, waterfowl, nongame species and endangered species of the state, and for the fulfillment of all other responsibilities of the department as provided by law;

(2) establish the hunting, fishing, and trapping rules of the department;

(3) establish the rules of the department governing the use of lands owned or controlled by the department and waters under the jurisdiction of the department;

(4) have the power within the department to establish wildlife refuges and bird and game preserves;

(5) approve all acquisitions or transfers by the department of interests in land or water;

(6) review and approve the budget of the department prior to its transmittal to the budget office; and

(7) review and approve construction projects whose estimated cost is more than \$1,000 but less than \$5,000.

History: En. 26-103.1 by Sec. 16, Ch. 417, L. 1977.

Title of Act

An act to make the department head of the department of fish and game a director appointed by the governor in accordance with section 82A-106, R. C. M. 1947; to remove certain qualifications for the director of the department of fish and game; to reallocate certain functions of the state fish and game commission to the department of fish and game; to state the powers of the state fish and game commission; to provide a grievance procedure for employees of the department of fish and game; and to change the name of the state fish and game commission; amending sections 26-101.1, 26-104, 26-104.4 through 26-104.7, 26-107 through 26-110, 26-110.3, 26-114, 26-118, 26-119, 26-121, 26-123, 26-126 through 26-129, 26-132, 26-133, 26-135, 26-202, 26-202.1, 26-202.4 through 26-202.8,

26-204, 26-210, 26-212, 26-212.1, 26-215, 26-220, 26-222, 26-225, 26-226, 26-228, 26-230, 26-233, 26-301, 26-301.1, 26-302, 26-303.5, 26-306, 26-307, 26-307.1, 26-319, 26-320, 26-324, 26-331, 26-332, 26-334, 26-335, 26-344, 26-402, 26-501, 26-501.1, 26-510, 26-813, 26-814, 26-909, 26-911 through 26-915, 26-918 through 26-920, 26-1120, 26-1121, 26-1123, 26-1124, 26-1201, 26-1206 through 26-1208, 26-1210, 26-1402, 26-1403, 26-1502 through 26-1505, 26-1508, 26-1509, 26-1601 through 26-1603, 26-1605, 26-1607 through 26-1610, 26-1612 through 26-1614, 26-1701, 26-1702, 26-1704, 26-1802, 26-1804 through 26-1808, 46-1903, 53-1012, 53-1020, 53-1022, 53-1025, 53-1028, 62-301, 62-304 through 62-306, 62-308, 62-310, 62-311, 62-314, 62-401 through 62-403, 68-1402, 69-3502, 69-3505, 69-3517, 69-3518, 75-5205, 82A-2001, 82A-2004, 89-3405, 89-3407, and 89-3449, R. C. M. 1947; repealing sections 26-106, 26-124, and 82A-2003, R. C. M. 1947; and providing an immediate effective date.

26-104. (3653) Powers and duties of department. (1) The department shall supervise all the wildlife, fish, game, game and nongame birds, and waterfowl, and the game, and fur-bearing animals of the state. It possesses all powers necessary to fulfill the duties prescribed by law and to bring actions in the proper courts of this state for the enforcement of the fish and game laws and the rules adopted by the department.

(2) It shall enforce all the laws of the state respecting the protection, preservation, and propagation of fish, game, fur-bearing animals and game and nongame birds within the state.

(3) It shall have the exclusive power to spend for the protection, preservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds all state funds collected or acquired for that purpose, whether arising from state appropriation, licenses, fines, gifts, or otherwise. Moneys collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from fines or damages collected for violations of the fish and game laws, from appropriations, or received by the department from any other sources are appropriated to and under control of the department.

(4) It may discharge any appointee or employee of the department for cause at any time.

(5) It may dispose of all property owned by the state, used for the protection, preservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds, which is of no further value or use to the state, and shall turn over the proceeds from the sale to the state treasurer to be credited to the fish and game account in the earmarked revenue fund.

(6) It may not issue permits to anyone to carry firearms within this state, except to regularly appointed officers or wardens.

History: En. Sec. 4, Ch. 193, L. 1921; re-en. Sec. 3653, R. C. M. 1921; amd. Sec. 2, Ch. 77, L. 1923; amd. Sec. 2, Ch. 192, L. 1925; amd. Sec. 1, Ch. 200, L. 1935; amd. Sec. 1, Ch. 157, L. 1941; Subsec. (24) added by Sec. 1, Ch. 40, L. 1951; Subsec. (15) amd. by Sec. 1, Ch. 157, L. 1955; Subsec. (25) added by Sec. 1, Ch. 151, L. 1957; amd. Sec. 1, Ch. 36, L. 1959; Subsec. (26) added by Sec. 1, Ch. 96, L. 1959; amd. Sec. 1, Ch. 173, L. 1965; Subsec. (15) amd. by Sec. 1, Ch. 344, L. 1969; amd. Sec. 1, Ch. 279, L. 1971; amd. Sec. 1, Ch. 364, L. 1973; amd. Sec. 3, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977.

Amendments

The 1969 amendment added "provided, however, that all drawings for elk permits shall be held in the city or town which has suitable accommodations for the persons who will attend the drawing nearest to the area to be hunted but in no case shall the drawing be held in a city or town more distant than the county seat nearest to the area to be hunted" to the

end of subsection (15). See 1973 amendment.

The 1971 amendment inserted "all" before "public fishing reservoirs," "public" before "lakes," and "rivers and streams" in the first paragraph of subsection (26); and inserted "the operation of motor-driven boats" and "lakes, rivers and streams" in two places in the first sentence of the second paragraph of subsection (26). See 1973 amendment.

Chapter 364, Laws of 1973 substituted the last sentence of subsection (15) for the proviso added by the 1969 amendment.

Chapter 511, Laws of 1973 substituted "fish and game account in the earmarked revenue fund" at the end of subsection (5) for "state fish and game fund"; deleted subsections (6) to (22) and (24) to (26); renumbered subsection (23) as (6); deleted "who are paid by the state of Montana" from the end of the present subsection (6); deleted a final paragraph; and made minor changes in style, phraseology and punctuation.

26-104.2. Repealed.**Repeal**

Section 26-104.2 (Sec. 1, Ch. 106, L. 1971), relating to the authority of the commission to adopt rules governing the

use of livestock and motor vehicles during archery season, was repealed by Sec. 58, Ch. 511, Laws 1973.

26-104.3. Fixing of general and special seasons and bag and possession limits. (1) The commission may fix seasons, bag limits, possession limits, and season limits; open or close, shorten or lengthen seasons on any species of game, bird, fish, or fur-bearing animals as defined by section 26-201, and declare areas open to the hunting of deer, antelope, and elk by bow and arrow permit holders, and designate times when only bow and arrows may be used to hunt deer, antelope, and elk in those areas. It may declare areas open to deer hunting where shotguns only may be used to hunt or kill deer. It may declare areas open to special license holders only, and issue special licenses in a limited number when it determines, after proper investigation, that such a season is necessary to assure the maintenance of an adequate supply of game birds, fish, animals, or fur-bearing animals. It may declare a special season and issue special licenses when game birds or animals or fur-bearing animals are causing damage to private property, or when written complaint of such damage has been filed with the state fish and game commission by the owner of that property. In determining to whom those licenses shall be issued, it may, when more applications are received than the number of animals to be killed, award permits to those chosen under a drawing system. The procedures used for awarding the permits from the drawing system shall be determined by the commission.

(2) The commission may adopt rules governing the use of livestock and vehicles, by archers, during special archery seasons.

(3) It may divide the state into fish and game districts, and create fish, game, or fur-bearing animal districts throughout the state. It may declare closed season for hunting, fishing, or trapping in any of those districts, and later may open those districts to hunting, fishing, or trapping.

(4) It may declare a closed season on any species of game, fish, game birds, or fur-bearing animals threatened with undue depletion from any cause. It may close any area or district of any stream, public lake, or public water, or portions thereof, to hunting, trapping, or fishing for limited periods of time, when necessary to protect a recently stocked area, district, water, spawning waters, spawn-taking waters, or spawn-taking stations, or to prevent the undue depletion of fish, game and fur-bearing animals, and game and nongame birds. It later may open the area or district upon consent of a majority of the property owners affected.

(5) It may declare certain fishing waters closed to fishing except by persons under thirteen (13) years of age. The purpose of this subsection is to provide suitable fishing waters for the exclusive use and enjoyment of juveniles under thirteen (13) years of age, at times and in areas the commission in its discretion considers advisable and consistent with its policies relating to fishing.

History: En. 26-104.3 by Sec. 4, Ch. 511, L. 1973.

DECISIONS UNDER FORMER LAW

Drawing for Licenses

The literal language of former subsection (15) of sec. 26-104 did not require that the application process to receive a permit to hunt elk be fulfilled by one personally present at the drawing; rather it merely required that the drawing be held at a particular town. State ex rel. Jones v. District Court, 158 M 67, 488 P 2d 1141.

Seasons on Indian Reservation

Conviction of non-Indian for killing two bull elk on Crow Indian Reservation during season closed by state fish and game laws was not in conflict with act of Congress providing penalty for trespass to possessory rights of reservation Indians nor in conflict with Montana Enabling Act providing that Indian lands shall remain under the absolute jurisdiction and control of Congress of United States. State ex rel. Nepstad v. Danielson, 149 M 438, 427 P 2d 689.

26-104.4. Acquisition, importation, and propagation of fish, game, game birds, and fur-bearing animals—introduction and propagation of waterfowl food. The department may:

(1) Acquire by gift, purchase, capture, or otherwise any fish, game, game birds, or animals, for propagation, experimental, or scientific purposes.

(2) Provide for the importation of game birds and game and fur-bearing animals and for the protection, propagation, and distribution of imported or native birds and animals.

(3) Use fish and game funds necessary for the construction, maintenance, operation, upkeep, and repair of fish hatcheries, game farms or other property or means and appliances for the protection and propagation of fish, game and fur-bearing animals, or game or nongame birds. It may appropriate moneys from the funds at its disposal for the extermination or eradication of predatory animals that destroy fish, game, or fur-bearing animals, or game or nongame birds.

(4) Spend fish and game funds necessary to introduce and propagate wild waterfowl food and for that purpose may secure expert advice as to what kinds of waterfowl foods are adapted to the climate, soil, and waters of this state.

History: En. 26-104.4 by Sec. 5, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977.

26-104.5. Construction and maintenance of fish hatcheries and fish ladders. (1) The department shall furnish plans for, direct, and compel the construction, installation, and repair of fish ladders upon dams and other obstructions in streams. The fish ladders shall be installed and maintained at the expense of the owners of the dam or other obstruction.

(2) The department may purchase and maintain at the expense of the state fish and game fund suitable fish screens or fish wheels, or other devices, to install in irrigating ditches to prevent fish entering said ditches.

(3) The department may locate, lay out, construct, and maintain nurseries and rearing ponds where fry can be planted, propagated, and reared to be distributed in the waters of this state. The department may spend from fish and game funds, sums necessary for this purpose.

History: En. 26-104.5 by Sec. 6, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977.

DECISIONS UNDER FORMER LAW

Fish Ladder Construction

Mandamus to compel fish pond licensee, in compliance with a statute, to construct fish ladder on diversion dam installed seven years before with approval of fish and game commission would be denied on

theory that individuals who have put water to beneficial use should not have their rights arbitrarily diluted under claim of sovereign right. *Paradise Rainbows v. Fish and Game Commission*, 148 M 412, 421 P 2d 717.

26-104.6. Acquisition and sale of lands or waters by department. (1)

The department, with the consent of the commission, may acquire by purchase, condemnation, lease, agreement, gift, or devise, and may acquire easements upon lands or waters for the purposes listed in this subsection. The department may develop, operate, and maintain acquired lands or waters:

- (a) for fish hatcheries, nursery ponds, or game farms;
- (b) as lands or water suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or protection;
- (c) for public hunting, fishing, or trapping areas;
- (d) to capture, propagate, transport, buy, sell, or exchange any game, bird, fish, fish eggs, or fur-bearing animals needed for propagation or stocking purposes, or to exercise control measures of undesirable species;
- (e) to extend and consolidate by exchange, lands or waters suitable for these purposes.

(2) The department, with the consent of the commission, may dispose of lands and waters acquired by it on those terms after that public notice, and without regard to other laws which provide for sale or disposal of state lands, and with or without reservation, as it considers necessary and advisable. Notice of sale describing the lands or waters to be disposed of shall be published once a week for 3 successive weeks in a newspaper with general circulation printed and published in the county where the lands or waters are situated, or if no newspaper is published in that county then in any newspaper with general circulation in that county. The notice shall advertise for cash bids to be presented to the director within 30 days from the date of the first publication. Each bid must be accompanied by a cashier's check or cash deposit in an amount equal to 10% of the amount bid. The highest bid shall be accepted upon payment of the balance due within 10 days after mailing notice by registered mail to the highest bidder. If that bidder defaults on payment of the balance due, then the next highest bidders shall be similarly notified in succession until a sale is completed. Deposits shall be returned to the unsuccessful bidders except bidders defaulting after notification. The department shall reserve the right to reject any bids which do not equal or exceed the full market value of the lands and waters as determined by the department. The department shall convey the lands and waters by deed without covenants of warranty, executed by the governor, or in his absence or disability by the lieutenant governor, attested by the secretary of state, and further countersigned by the director.

(3) Notwithstanding the provisions of 82-1918, the department, with the consent of the commission, is authorized to utilize the installment con-

tract method to facilitate the acquisition of wildlife management areas, in which game and nongame fur-bearing animals, and game and nongame birds may breed and replenish, and areas which provide access to fishing sites for the public. In no case may the total cost of such installment contracts exceed the cost of purchases authorized by the department and appropriated by the legislature.

History: En. 26-104.6 by Sec. 7, Ch. 511, L. 1973; amd. Sec. 1, Ch. 157, L. 1975; amd. Sec. 4, Ch. 417, L. 1977.

Amendments

The 1975 amendment added subsection (3).

The 1977 amendment substituted "department" throughout the section for "commission"; inserted "with the consent of the commission" near the beginning of each subsection; deleted "acquire" after

"may" in the second sentence of subsection (1); deleted "the commission or" before "the director" in the third sentence of subsection (2); substituted "director" at the end of the last sentence of subsection (2) for "chairman of the commission"; deleted the former last sentence of subsection (2) which read: "The deed shall be attested by the secretary of the commission, but need not be acknowledged"; and made minor changes in phraseology and style.

26-104.7. Co-operative research, training, and other projects—educational and biological programs. (1) The department may enter into co-operative agreements with educational institutions and state, federal, or other agencies to promote wildlife research and to train men for wildlife management. It may enter into co-operative agreements with federal agencies, municipalities, corporations, organized groups of landowners, associations, and individuals for the development of game, bird, fish, or fur-bearing animal management and demonstration projects.

(2) It may establish and maintain an educational and biological program for the collection and diffusion of statistics and information germane to the purpose of this title.

History: En. 26-104.7 by Sec. 8, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977.

26-104.8. Creation of fish and game refuges. (1) The commission may establish and close to hunting, trapping, or fishing, any game, bird, or fish refuge on public lands and, with the consent of the owner, on private lands. It may close streams, lakes, or parts of them, to hunting, trapping, or fishing.

(2) The commission may establish game refuges in which game and fur-bearing animals, game or nongame birds may breed and replenish. These refuges shall be established by order of the commission upon petition and proper showing that the action is, in judgment of the commission, necessary and in the best interest of the wildlife within the area to be included in the refuge. The purpose of this provision is to establish small refuges rather than large preserves or rather than close large areas to hunting or trapping.

(3) The commission may designate and protect certain areas as resting, feeding, and breeding grounds for migratory birds, in which hunting and molestation are forbidden. The purpose of this provision is not to interfere unduly with the hunting of waterfowl, but to provide havens in which they can rest, feed, and breed without molestation.

(4) After a petition has been duly filed with the secretary of the commission requesting that an area be set aside as a game refuge, the

secretary shall immediately publish a notice in a paper of general circulation in the county in which the area is located. The notice shall state that a hearing on the matter will be held at a designated place in the county not less than fifteen (15) days after first publication, at which time and place all interested parties may appear and be heard.

History: En. 26-104.8 by Sec. 9, Ch. 511, L. 1973.

26-104.9. Regulation of use of lands. (1) The commission may adopt and enforce rules governing uses of lands acquired or held under easement by the commission, or lands which it operates under agreement with or in conjunction with a federal or state agency or private owner. The rules shall be adopted in the interest of public health, public safety, and protection of property in regulating the use of these lands. All lease and easement agreements shall itemize uses as listed in section 26-104.6.

(2) The commission may adopt and enforce rules governing recreational uses of all public fishing reservoirs, public lakes, rivers, and streams which are legally accessible to the public or on reservoirs and lakes which it operates under agreement with or in conjunction with a federal or state agency or private owner. These rules shall be adopted in the interest of public health, public safety, and protection of property in regulating swimming, hunting, fishing, trapping, boating, including but not limited to boating speed regulations, the operation of motor-driven boats, water skiing, surfboarding, picnicking, camping, sanitation, and use of firearms on the reservoirs, lakes, rivers, and streams or at designated areas along the shore of the reservoirs, lakes, rivers, and streams. Areas regulated pursuant to the authority contained in this section must be areas which are legally accessible to the public. These rules are subject to review and approval by the department of health and environmental sciences as to public health and sanitation before becoming effective. Copies of the rules shall show that endorsement.

History: En. 26-104.9 by Sec. 10, Ch. 511, L. 1973; amd. Sec. 1, Ch. 332, L. 1975.

Amendments

The 1975 amendment substituted "all public fishing reservoirs, public lakes, rivers, and streams which are legally accessible to the public" for "public fishing reservoirs and lakes constructed by the

commission" in the first sentence of subsection (2); inserted "the operation of motor-driven boats" after "speed regulations" in the second sentence of subsection (2); inserted "lakes, rivers, and streams" in two places in the second sentence of subsection (2); and inserted the third sentence of subsection (2).

26-105, 26-105.1. (3654) Repealed.

Repeal

Sections 26-105, 26-105.1 (Sec. 5, Ch. 193, L. 1921; Sec. 1, Ch. 59, L. 1927; Secs. 1, 2, Ch. 152, L. 1949; Secs. 1, 2, Ch. 6, L. 1951; Sec. 1, Ch. 127, L. 1953; Sec. 1, Ch.

57, L. 1957; Sec. 1, Ch. 238, L. 1965; Sec. 1, Ch. 166, L. 1969), relating to compensation of the commissioners, were repealed by Sec. 58, Ch. 511, Laws 1973.

26-106. (3655) Repealed.

Repeal

Section 26-106 (Sec. 6, Ch. 193, L. 1921; Sec. 3, Ch. 192, L. 1925; Sec. 2, Ch. 59, L. 1927; Sec. 1, Ch. 163, L. 1931; Sec. 1, Ch. 87, L. 1947; Sec. 1, Ch. 81, L. 1951; Sec.

1, Ch. 79, L. 1955; Sec. 11, Ch. 511, L. 1973; Sec. 12, Ch. 439, L. 1975), relating to powers and duties of director of fish and game, was repealed by Sec. 15, Ch. 417, Laws 1977.

26-106.1, 26-106.2. Repealed.

Repeal Sections 26-106.1, 26-106.2 (Secs. 1, 2, Ch. 37, L. 1955), relating to the fish and game director and wardens, were repealed by Sec. 58, Ch. 511, Laws 1973.

26-106.3. Director to carry out policies. The director shall carry out the policies of the commission and shall adopt rules authorized by law to implement those policies.

History: En. 26-106.3 by Sec. 17, Ch. 417, L. 1977.

26-107. (3656) State fish and game wardens—appointment—qualifications. The director shall have the power to employ and appoint a deputy director, and a sufficient number of state fish and game wardens for the proper enforcement of the fish and game laws of the state, and the orders, rules and regulations of the department, and for such other purposes as the director may designate. State fish and game wardens shall be selected from applicants who have passed such an examination as may be required according to the rules adopted and promulgated by the department. No person shall be appointed a state fish and game warden until a certificate shall have been issued to him by the department to the effect that he has passed the required examination and is a fit and proper person to perform the duties of the office. State fish and game wardens employed and appointed by virtue of this act shall be persons who have an interest in protection, conservation and propagation of wildlife, game and fur-bearing animals, fish and game birds; they shall devote all of their time to their official duties.

History: En. Sec. 7, Ch. 193, L. 1921; re-en. Sec. 3656, R. C. M. 1921; amd. Sec. 4, Ch. 192, L. 1925; amd. Sec. 3, Ch. 59, L. 1927; amd. Sec. 1, Ch. 158, L. 1941; amd. Sec. 1, Ch. 121, L. 1947; amd. Sec. 1, Ch. 58, L. 1951; amd. Sec. 1, Ch. 78, L. 1955; amd. Sec. 1, Ch. 77, L. 1957; amd. Sec. 5, Ch. 417, L. 1977.

Amendments

The 1977 amendment deleted "by and with the consent and approval of the commission" after "the director" at the beginning of the first sentence; and substituted "department" throughout the section for "commission."

26-108. Employees of the department—removal—rating—salaries—expenses. The director may suspend without pay, reduce in rank, or remove any employee at any time for cause, providing that any person who has been continuously employed for 1 year or more immediately preceding any suspension or discharge may demand and receive a hearing before the department on charges filed. The action of the department resulting from such a hearing shall be final. The director shall rate all employees on the basis of merit and efficiency in accordance with such rules as the department may adopt to secure a proper rating of each person employed. The salaries of employees shall be fixed by the department, and travel expenses, as provided for in 59-538, 59-539, and 59-801, as amended, shall be allowed employees while upon official business away from designated headquarters.

History: En. Sec. 8, Ch. 193, L. 1921; re-en. Sec. 3657, R. C. M. 1921; amd. Sec. 1, Ch. 150, L. 1955; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 4, Ch. 453, L. 1977.

Amendments

The 1977 amendment deleted "and regulations" after "rules" in the third sentence; substituted "travel expenses, as

provided for in 59-538, 59-539, and 59-801, as amended" in the last sentence for "necessary expenses as provided by law";

and made minor changes in phraseology, punctuation and style.

26-109. (3658) Political activity prohibited. While retaining the right to vote as he may please, and to express his opinions on all political questions, no employee of the department may use his official authority or influence for the purpose of interfering with an election, or affecting the results, thereof, or for the purpose of coercing or influencing the political actions of any person or body.

History: En. Sec. 9, Ch. 193, L. 1921; re-en. Sec. 3658, R. C. M. 1921; amd. Sec. 1, Ch. 21, L. 1955; amd. Sec. 4, Ch. 188, L. 1975; amd. Sec. 13, Ch. 417, L. 1977.

Amendments

The 1975 amendment deleted "shall take any active part in political management or political campaigns" after "fish and game commission"; and made a minor change in phraseology.

26-109.1. Grievance procedure. (1) An employee of the department, aggrieved by a serious matter of his employment based upon work conditions, supervision, or the result of an administrative action, who has exhausted all administrative remedies within the department, is entitled to a hearing before the employee appeals board designated by the department of administration, under the provisions of a grievance procedure prescribed by the board, for the resolution of his grievance.

(2) Direct or indirect interference, restraint, coercion, or retaliation by an employee's supervisor or the department against an aggrieved employee because the employee has filed or attempted to file a grievance with the board shall also be the basis for a grievance and shall entitle the employee to a hearing before the board for resolution.

(3) If, upon the preponderance of the evidence taken at the hearing, the board is of the opinion that the employee is aggrieved, it may issue an order to the department requiring such action of the department as will resolve the employee's grievance. The order of the board shall be binding upon the department.

History: En. 26-109.1 by Sec. 18, Ch. 417, L. 1977.

Effective Date

Section 19 of Ch. 417, Laws 1977 provided the act should be effective on its passage and approval. Approved April 18, 1977.

26-110. Qualifications, powers, and duties of wardens. (1) Wardens shall be qualified by their experience, training, and skill in protection, conservation, and propagation of wildlife, game, and fur-bearing animals, fish and game birds, and interested in this work. They shall devote all of their time for which they are appointed to their official duties.

(2) They shall enforce the laws of this state and the rules of the department with reference to the protection, preservation, and propagation of game and fur-bearing animals, fish, and game birds.

(3) They shall see that persons who hunt, fish, or take game, or fur-bearing animals, game birds, or fish, have necessary licenses.

(4) They shall assist in the protection, conservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds, and assist

in the planting, distributing, feeding, and care of fish, game, fur-bearing animals, and game and nongame birds. They shall, when ordered by the department, assist in the destruction of predatory animals, birds, and rodents. They shall perform all other duties prescribed by the department, and make a monthly report to the department correctly informing the department of their activities on each day of the preceding month, with regard to the enforcement of the fish and game laws, showing where their duties called them, and what they did, and the reports shall contain any pertinent recommendations the wardens may see fit to make.

(5) A warden may not compromise or settle out of court violations of fish and game laws.

(6) A warden has the authority to inspect any and all fish, game and nongame birds, waterfowl, game animals and fur-bearing animals at reasonable times and at any location other than a residence or dwelling and, upon request therefor, all persons having in their possession any fish, game and nongame birds, waterfowl, game animals and fur-bearing animals shall exhibit the same, and all thereof, to the warden for such inspection.

History: En. Sec. 10, Ch. 193, L. 1921; re-en. Sec. 3659, R. C. M. 1921; amd. Sec. 5, Ch. 192, L. 1925; amd. Sec. 12, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977.

Amendments

The 1973 amendment substituted "Wardens" for "The deputy state fish and game wardens employed and appointed by virtue of this act" at the beginning of subsection (1); substituted "qualified by their experience" for "persons who have had experience" near the beginning of subsection (1); deleted subsection (4) relating to

powers of arrest, search and seizure; re-designated subsections (5) and (6) as (4) and (5); added a new subsection (6); and made minor changes in style, phraseology and punctuation.

Subd. 5

Consent to Improper Tagging

Any consent given by game warden to illegal tagging of killed elk would be outside scope of authority and would have no effect whatever in law. *State ex rel. Visser v. State Fish and Game Commission*, 150 M 525, 437 P 2d 373.

26-110.1. Protection of private property by fish and game wardens—ex officio fire wardens. It shall be the duty of state fish and game wardens (state conservation officers) to enforce the provisions of sections 94-6-102, 94-6-203 and 32-4410, R.C.M. 1947, on private lands where public recreation is permitted, and to act as ex officio fire wardens as provided by section 81-1412, R.C.M. 1947.

History: En. Sec. 1, Ch. 85, L. 1969; amd. Sec. 35, Ch. 513, L. 1973.

Title of Act

An act to require state fish and game wardens (state conservation officers) to enforce the provisions of sections 94-3308, 94-3309 and 32-4410, R. C. M. 1947, on private lands where public recreation is

permitted, and act as ex officio fire wardens as provided by section 81-1412, R. C. M. 1947.

Amendments

The 1973 amendment substituted the references to sections 94-6-102 and 94-6-203 for references to sections 94-3308 and 94-3309.

26-110.2. Power of wardens in protection of private property. State fish and game wardens (state conservation officers) shall have the power of peace officers in the enforcement of sections 94-6-102, 94-6-203 and 32-4410, R.C.M. 1947.

History: En. Sec. 2, Ch. 85, L. 1969; amd. Sec. 36, Ch. 513, L. 1973.

Amendments

The 1973 amendment substituted the reference to sections 94-6-102 and 94-6-203 for a reference to sections 94-3308 and 94-3309.

26-110.3. Enforcement powers of wardens. A warden may:

- (1) serve a subpoena issued by a court for the trial of a violator of the fish and game laws;
- (2) search, without a warrant, any tent not used as a residence, any boat, vehicle, box, locker, basket, creel, crate, game bag, or package, or their contents, upon probable cause to believe that any fish and game law or department rule for the protection, conservation, or propagation of game, fish, birds, or fur-bearing animals has been violated;
- (3) search, with a search warrant, any dwelling house or other building;
- (4) seize game, fish, game birds, and fur-bearing animals and any parts of them, taken or possessed in violation of the law or the rules of the department;
- (5) seize and hold, subject to law or the orders of the department, devices which have been used to unlawfully take game, fish, birds, or fur-bearing animals;
- (6) arrest, in accordance with Title 95, chapter 6, a violator of a fish and game law or rule of the department, violation of which is a misdemeanor;
- (7) exercise the other powers of peace officers in the enforcement of the fish and game laws, the rules of the department, and judgments obtained for violation of those laws or rules.

History: En. 26-110.3 by Sec. 13, Ch. 511, L. 1973; amd. Sec. 1, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977.

Amendments

The 1977 amendment inserted "any" before "boat" in subdivision (2); inserted "or" before "package" in subdivision (2); and made minor changes in style and punctuation.

DECISIONS UNDER FORMER LAW**Confiscation of Illegally Killed Game**

Under sec. 26-110, subdivision (4) (deleted by Ch. 511, Laws of 1973), illegally killed elk, tagged improperly in that one tag was not punched on month and day of kill and other was not filled in

with name and address of hunter and county of kill, were subject to confiscation by fish and game commission. State ex rel. Visser v. State Fish and Game Commission, 150 M 525, 437 P 2d 373.

26-111. (3660) Oath of state fish and game director and wardens.**Cross-References**

Bonds of state officers and employees,
sec. 6-105 et seq.

26-114. (3663) Appointment of ex officio state fish and game wardens. All sheriffs and their deputies, constables, all peace officers of the state, or any subdivision thereof, and all state forest officers, and such other officers of the United States forest service or agents of the United States fish and wildlife service which are assigned to duty in this state, and field personnel of the department, as the director may appoint are hereby made ex officio state fish and game wardens, without pay, except that the department may, in its discretion, allow traveling expenses, as provided for in 59-538, 59-539, and 59-801, which, if allowed, shall be paid upon proper vouchers from

the state fish and game funds. Ex officio state fish and game wardens shall have the same powers with reference to the enforcement of the fish and game laws of this state as regularly appointed state fish and game wardens, and it is hereby made their duty to assist, whenever possible, in the enforcement of said laws.

History: En. Sec. 14, Ch. 193, L. 1921; re-en. Sec. 3663, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1955; amd. Sec. 1, Ch. 236, L. 1965; amd. Sec. 13, Ch. 439, L. 1975; amd. Sec. 6, Ch. 417, L. 1977.

Amendments

The 1975 amendment substituted "allow traveling expenses, as provided in sections 59-538, 59-539 and 59-801" for "allow actual and necessary traveling expenses."

The 1977 amendment substituted references to department for references to the fish and game commission throughout the section; deleted "with the approval of the state fish and game commission" after "director" in the first sentence; and made minor changes in phraseology, punctuation and style.

26-115. (3664) State fish hatcheries. The director has general supervision over all fish hatcheries in the state. The output of all hatcheries shall be used to stock the lakes and streams of the state and shall be for free and impartial distribution. Distribution shall be under the direction of the department subject to an official order of the director. The director may exchange spawn or fish with other states or persons for distribution in this state.

History: En. Sec. 15, Ch. 193, L. 1921; re-en. Sec. 3664, R. C. M. 1921; amd. Sec. 8, Ch. 192, L. 1925; amd. Sec. 2, Ch. 81, L. 1951; amd. Sec. 15, Ch. 177, L. 1965; amd. Sec. 14, Ch. 511, L. 1973.

Amendments

The 1973 amendment inserted "fish" in the first sentence; deleted "and shall with

the consent and approval of the commission appoint and employ a superintendent of fisheries, who shall be a competent person and a skilled fish culturist" from the end of the first sentence; substituted "the department" for "said superintendent of fisheries" in the third sentence; and made minor changes in style, phraseology and punctuation.

26-116. (3665) Repealed.

Repeal

Section 26-116 (Sec. 16, Ch. 193, L. 1921; Sec. 9, Ch. 192, L. 1925; Sec. 5, Ch. 59, L. 1927; Sec. 1, Ch. 86, L. 1947; Sec.

3, Ch. 81, L. 1951), relating to the salary of the superintendent of state fisheries, was repealed by Sec. 58, Ch. 511, Laws 1973.

26-117. (3666) Powers and duties of department pertaining to state fisheries. The department has full control of all state fish hatcheries and is responsible for their construction, maintenance, and operation. All that construction work done under contract or otherwise, shall be done under control and supervision of the director. The department shall administer the taking and collecting of all spawn, the hatching of all spawn and eggs, and the rearing, propagation, and distribution of fry, fingerlings, and fish. The department may purchase as many eyed eggs as are necessary to keep the hatcheries of the state supplied with eggs and in full operation. The department shall make every reasonable effort to collect sufficient eggs from the public streams or lakes of this state to supply the hatcheries, and for that purpose may build, equip, and use fish traps and nets at any time of the year in all public waters. The department may purchase the eyed

eggs of fish not propagated in this state for the purpose of stocking the waters of this state.

History: En. Sec. 17, Ch. 193, L. 1921; re-en. Sec. 3666, R. C. M. 1921; amd. Sec. 10, Ch. 192, L. 1925; amd. Sec. 4, Ch. 81, L. 1951; amd. Sec. 15, Ch. 511, L. 1973.

to the superintendent of state fisheries; deleted "with approval of state fish and game warden" following "the department has" in the first sentence; and made minor changes in style and phraseology.

Amendments

The 1973 amendment substituted references to the department for references

26-118. (3667) Department may control state waters for propagation of fish. The department may control the waters of any lake, pond, or stream, which lies wholly within the limits of land owned by the state, so far as the use of that lake, pond, or stream for the breeding and propagation of game fish is concerned. Before the right to control any lake, pond, or stream inures to the department, the chairman of the department shall notify the department of state lands that the lake, pond, or stream is wanted for that purpose, giving a description of the land by legal subdivision when surveyed, or a sufficient general description when not so surveyed. The department of state lands shall make that entry upon its books and maps as may serve as notice to a lessor or purchaser of the right claimed by the state in the lake, pond, or stream. The department of state lands shall notify a lessor, purchaser, or applicant to lease or purchase of the fact that a right to the use of the lake, pond, or stream is so claimed. This right may not continue for more than one year after the land is sold by the state. If the right to the control of a lake, pond, or stream lessens the value of that land or prevents the ready sale of it, the right granted to the department of fish and game may be terminated upon giving sixty (60) days' notice of the termination to the chairman of the department.

History: En. Sec. 18, Ch. 193, L. 1921; re-en. Sec. 3667, R. C. M. 1921; amd. Sec. 16, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977.

after the passage of this act" from the beginning of the first sentence; substituted references to the department of state lands for references to the state land agent in the second, third and fourth sentences; and made minor changes in style, phraseology and punctuation.

Amendments

The 1973 amendment deleted "From and

26-119. (3668) Department and commission to procure plans for construction projects. It shall be the duty of the department, with the consent of the commission to procure suitable plans and specifications for any construction project under its authority or under authority of the state legislature, when the estimated value or cost of the same shall be more than \$1,000 but less than \$5,000 and the department, with the consent of the commission shall cause said project to be constructed, but in accordance with such plans and specifications, by contract, said contract to be let after publishing a notice stating the time and place of letting the same, and where plans and specifications may be seen. Notice shall be published not less than once a week for 2 weeks prior to the time of letting such contract, in some newspaper of general circulation in the county in which said project is to be constructed, and elsewhere if deemed best by the department. Upon concurrence of the commission, the department, if not

satisfied with the bids received, or for any other reason, may reject any and all bids received and readvertise as often as may be necessary. Only one bid need be received and the contract shall be let to the lowest responsible bidder. Any person to whom a contract may be given shall be required to give a good and sufficient bond, conditioned for the faithful performance and completion of such contract, the same to be approved by the department, with the consent of the commission. The department may contract for construction projects estimated to cost \$1,000 or less without providing for plans or specifications, notice, competitive bidding or performance bonds.

History: En. Sec. 19, Ch. 193, L. 1921; re-en. Sec. 3668, R. C. M. 1921; amd. Sec. 1, Ch. 186, L. 1969; amd. Sec. 7, Ch. 417, L. 1977.

Amendments

The 1969 amendment substituted "construction projects" for "buildings" where the references appear, inserted "but less than five thousand dollars (\$5,000)" in the first sentence, inserted the provision that only one bid need be received, and added the last sentence.

The 1977 amendment substituted "department" throughout the section for "commission"; inserted "with the consent of the commission" after "department" throughout the section; and made minor changes in phraseology, punctuation and style.

Effective Date

Section 2 of Ch. 186, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 3, 1969.

26-120. (3669) Repealed.

Repeal

Section 26-120 (Sec. 20, Ch. 193, L. 1921), an obsolete section transferring funds of former governmental units to

the state fish and game commission, was repealed by Sec. 58, Ch. 511, Laws 1973. For new law, see sec. 26-121.

26-121. State fish and game moneys. (1) All moneys collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, or from fines, damages collected for violations of the fish and game laws of this state, from appropriations, or received by the department from any other state source, shall be turned over to the state treasurer, and placed by him in the earmarked revenue fund to the credit of the department. Out of any fine imposed by a court for the violation of the fish and game laws, the costs of prosecution shall be paid to the county where the trial was held in any case where the fine is not imposed in addition to the costs of prosecution. Any moneys received from federal sources shall be deposited in the federal and private revenue fund to the credit of the department.

(2) Those moneys shall be exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses, and expenditures authorized to be made by the department under the terms of this title. Those moneys shall be spent for those purposes, by the department, subject to appropriation by the legislature.

(3) Any reference to the fish and game fund in this code means fish and game moneys in the earmarked revenue fund and federal and private revenue fund.

History: En. Sec. 21, Ch. 193, L. 1921; 32, Ch. 59, L. 1927; amd. Sec. 1, Ch. 53, re-en. Sec. 3670, R. C. M. 1921; amd. Sec. L. 1933; amd. Sec. 2, Ch. 114, L. 1945;

amd. Sec. 159, Ch. 147, L. 1963; amd. Sec. 17, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977.

Amendments

The 1973 amendment deleted from subsection (2) a proviso requiring that pur-

chases be made through the state purchasing agent; deleted from subsection (3) a first sentence which read "The fish and game fund is abolished"; and made numerous minor changes in style, phraseology and punctuation.

26-123. (3672) Salaries, per diem and expenses, how paid. All salaries, per diem, expenses, and claims incurred by the department, or a person appointed or employed by it, shall be paid out of fish and game moneys in the earmarked revenue fund, upon warrants properly drawn on those funds. The aggregate of all salaries, per diem, expenses, and claims presented for payment shall not exceed at any time the total amount of fish and game moneys in that fund. The department shall approve all bills properly presented which have been incurred under its authority and by its direct order. The expenses of all wardens shall be approved by the director before they are paid. The salary, per diem, or expenses of an employee employed in the propagation or distribution of fish shall be approved by the director before they are paid. All items of expense, amounting to more than one and one-half dollars and incurred by anyone employed in the state fish and game department, shall be evidenced by a proper voucher or receipt before they are approved or paid.

History: En. Sec. 23, Ch. 193, L. 1921; re-en Sec. 3672, R. C. M. 1921; amd. Sec. 17, Ch. 97, L. 1961; amd. Sec. 18, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977.

Amendments

The 1973 amendment substituted ref-

erences to moneys in the earmarked revenue fund for references to state fish and game funds; substituted "director" for "superintendent of state fisheries" in the next to last sentence; and made minor changes in style and phraseology.

26-124. (3673) Repealed.

Repeal

Section 26-124 (Sec. 24, Ch. 193, L. 1921; Sec. 6, Ch. 81, L. 1951; Sec. 9, Ch.

93, L. 1969; Sec. 19, Ch. 511, L. 1973), relating to reports of director, was repealed by Sec. 15, Ch. 417, Laws 1955.

26-125. (3674) Publication of laws. As soon as practicable after the adjournment of each session of the legislature, the director in co-operation with the attorney general shall make a compilation of the laws relating to fish, game, game birds, and animals in force at the date of the compilation, and properly index them. Copies of the compilation, sufficient in number for the purposes of this section, shall be printed in pamphlet form, pocket size. The director shall distribute to justices of the peace, wardens, and other officers and persons empowered to issue licenses for hunting, fishing, and trapping, a supply of the compilation sufficient to permit one copy to be given anyone desiring a copy. The expense incurred in printing the laws shall be paid out of fish and game moneys in the earmarked revenue fund.

History: En. Sec. 25, Ch. 193, L. 1921; re-en. Sec. 3674, R. C. M. 1921; amd. Sec. 20, Ch. 511, L. 1973.

Amendments

The 1973 amendment substituted "director" for "state fish and game warden" near the beginning of the first and third

sentences; substituted "wardens" for "deputy fish and game wardens" near the beginning of the third sentence; substituted "fish and game moneys in the earmarked revenue fund" at the end of the section for "state fish and game fund"; and made minor changes in style, phraseology and punctuation.

26-126 to 26-129.**Compiler's Notes**

Section 13, Ch. 417, Laws 1977, substituted references to the department of fish

and game in these sections for references to the state fish and game commission.

26-132. Authority for department to make agreement with Indians concerning hunting and fishing. The department may negotiate and conclude an agreement with the council of the Confederated Salish and Kootenai tribes of the Flathead Indian reservation for the purpose of obtaining and establishing for the citizens of Montana, regularly licensed to hunt and fish in the state, the privileges of hunting and fishing on Indian lands on the Flathead Indian reservation; for the purpose of the conservation and protection of fish and game and fur-bearing animals on such Indian lands and on lands adjacent thereto; and for the purposes of setting dates for the opening and closing of seasons for hunting and fishing on such lands for Indians and non-Indians alike, opening and closing of streams and land areas for hunting and fishing, doing what in its judgment is necessary by way of granting to such tribal Indians state permits to hunt and fish, to be issued without charge to such Indians, stocking streams and land areas of such Indian lands for the common benefit, policing such Indian lands for the protection of fish and game, and in general carrying out the purposes of this section. If any part of such agreement provides for the payment of money to the tribes, that part must first have the approval of the state legislature.

History: En. Preamble, Ch. 198, L. 1947; amd. Sec. 2, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977.

Amendments

The 1977 amendment substituted "The commission" at the beginning of the section for "That the state fish and game commission" substituted "non-Indians"

near the middle of the first sentence for "whites"; substituted "this section" at the end of the first sentence for "this act"; substituted "agreement provides" in the second sentence for "treaty shall provide"; deleted "in the premises" after "payment of money" in the second sentence; and made minor changes in punctuation and phraseology.

26-133. Payments to counties for department-owned land—exceptions. The director shall, before October 15 of each year, send a voucher to the treasurer of each county in which the department owns any lands. The voucher shall describe the lands and state the number of acres in each parcel. The voucher shall authorize the drawing of a warrant to the county in a sum equal to the amount of taxes which would be payable on county assessment of the property were it taxable to a private citizen. A county treasurer receiving a voucher shall execute it and return it to the director, who shall approve it and transmit it to the state auditor. The state auditor shall draw a warrant in the amount shown on the voucher, payable to the county and shall send the warrant to the county treasurer. The warrant is payable out of any funds to the credit of the department. No voucher or payment may be made to a county in which the department owns less than one hundred (100) acres. No voucher or payment may be made to a county for lands owned by the department for game bird farm or fish hatchery purposes or lands administered with money from the general fund.

History: En. Sec. 1, Ch. 1, L. 1951; amd. Sec. 1, Ch. 188, L. 1953; amd. Sec. 21, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977.

Amendments

The 1973 amendment substituted "director" for "state fish and game warden" in the first and fourth sentences; deleted

"on or" before "before the 15th day of October" near the beginning of the first sentence; deleted "acquired by it for its purposes as provided by law" from the end of the first sentence; added "or lands administered with money from the general fund" at the end of the section; and made minor changes in style and phraseology.

26-134. Allocation of funds to school districts. The county commissioners of any county receiving funds, as provided in 26-133, may allocate, in such amounts as they determine, any portion of the funds to any school district in the county whenever the school district contains any department lands. Any balance remaining after allocations have been made to school districts shall be credited to the general fund of the county.

History: En. Sec. 2, Ch. 1, L. 1951; amd. Sec. 3, Ch. 9, L. 1977.

Amendments

The 1977 amendment inserted "as provided in 26-133" in the first sentence;

substituted "whenever the school district contains any department lands" in the first sentence for "which school district shall contain any of said lands"; and made minor changes in phraseology and punctuation.

26-135. Wild animals damaging property, etc.

Compiler's Notes

Section 13, Ch. 417, Laws 1977, substituted "department" in this section for "commission."

Discretion of Commission

Fish and game commission cannot be mandated to permit landowner to kill elk

to protect his property since, although statute compels commission to investigate property damage upon complaint, it confers discretion to act, one exercise of which is taking no action. *State ex rel. Sackman v. State Fish and Game Commission*, 151 M 45, 438 P 2d 663.

26-136. Meat of wild animals so killed—disposition. The meat of all animals killed or destroyed pursuant to section 26-135 by the department or the authorized landholder shall be conserved and given to state institutions, school lunch programs, or the department of social and rehabilitation services. The department shall provide transportation and distribution of the meat.

History: En. Sec. 2, Ch. 60, L. 1957; amd. Sec. 22, Ch. 511, L. 1973.

Amendments

The 1973 amendment inserted "pursuant to section 26-135" in the first sentence;

substituted "the department of social and rehabilitation services" for "welfare department" at the end of the first sentence; and made minor changes in style, phraseology and punctuation.

26-137. Checking stations. The department of fish and game is authorized to establish checking stations where deemed necessary to inspect licenses of hunters and fishermen and to inspect any game animals, fish or fur-bearing animals in the possession of hunters and fishermen.

History: En. Sec. 1, Ch. 270, L. 1973.

Title of Act

An act authorizing the department of

fish and game to establish checking stations and requiring hunters and fishermen to stop at such stations and report game in their possession.

26-138. Inspection of animals and fish at checking station. Every person, upon the request of the director, or his authorized representative,

or of any game warden, shall produce for inspection any current fish and game license which has been issued to such person and shall produce for inspection any game animals, birds, fish or fur-bearing animals in his possession. Hunters or fishermen entering or leaving areas for which checking stations have been established must stop and report if a checking station is on the hunter's or fishermen's route of travel, to or from the hunting or fishing area. Failure to stop and report at a checking station, when personnel are on duty, shall constitute a misdemeanor.

History: En. Sec. 2, Ch. 270, L. 1973.

CHAPTER 2—FISHING AND HUNTING LICENSES

Section

- 26-201. **Definitions.**
- 26-202. License required.
- 26-202.1. Licenses—fees—classifications of licenses—fees and powers under licenses.
- 26-202.2. Restrictions on special licenses.
- 26-202.3. Defining resident.
- 26-202.5. Nonresident bear license.
- 26-202.6. Nonresident one (1) day fishing license (Class B-4).
- 26-202.7. Special elk permits—power of department.
- 26-202.8. Nongame certificate.
- 26-204. **Application for license.**
- 26-210. Bounty claims for wild animals—approval and payment.
- 26-213. Carrying and exhibiting license.
- 26-215. Spotlighting unlawful—exemptions for minors from license requirements.
- 26-217. Alteration or transfer of license.
- 26-220. License agents—appointment.
- 26-221. Bond of license agent—preferred claim of state for license money.
- 26-222. Compensation—duties.
- 26-223. Appointments nontransferable—revocation—oaths.
- 26-228. Rules to implement reciprocal agreements—violations.
- 26-229. Wildlife conservation license required for purchase of hunting, fishing or trapping license.
- 26-230. Application—stamp attachment—fee—expiration.
- 26-231. Unlawful sales of hunting, fishing or trapping licenses.
- 26-232. False statements in license application.
- 26-233. **Disposition of fees.**
- 26-234. Portions of fees used to purchase recreational facilities.

26-201. (3681) Definitions. For the purposes of this act, the following shall be construed, respectively to mean:

Commission. The state fish and game commission.

Person. The plural or singular, male or female, as the case demands, including individual, associations, partnerships, and corporations, unless the context otherwise requires.

Open season. The time during which game birds, fish, game and fur-bearing animals may be lawfully taken.

Closed season. The time during which game birds, fish, game and fur-bearing animals may not be lawfully taken.

Angling or fishing. The taking of, or attempting to take fish by hook and single line or single rod in hand or within immediate control.

Upland game birds. Sharptail grouse, blue grouse, prairie chicken, sage hen or sage grouse, fool hen, ruffed grouse, commonly called native pheasant or native partridge, quail, Chinese pheasant and Mongolian

pheasant, commonly called ring-necked pheasant, Hungarian partridge, ptarmigan, wild turkey, and chukar partridge.

Migratory game birds. Waterfowl, including wild ducks, wild geese, brant, and swans; cranes, including little brown, sandhill and whooping cranes; rails, including coots, gallinules, sora or other rails; shore birds, including avocets, curlew, dowitcher, godwits, knots, upland plover, killdeer, sandpipers, Wilson snipes or jacksnipes, snipes, stilts, plovers, willets and yellow legs.

Nongame birds. All wild birds not defined herein as upland game birds or migratory game birds, shall be deemed nongame birds.

Game animals. Deer, elk, moose, antelope, caribou, mountain sheep, mountain goat, mountain lion, and bear.

Fur-bearing animals. Marten or sable, otter, muskrat, fisher, mink, bobcat, and beaver.

Predatory animals. Coyote, weasel, skunk, and civet cat.

Game fish. All species of the family salmonidae (chars, trout, salmon, grayling, and whitefish); all species of the genus stizostedion (sandpike or sauger and walleyed pike or yellowpike perch); all species of the genus esox (northern pike, pickerel and muskellunge); all species of the genus micropterus (bass); all species of the genus polyodon (paddlefish); all species of the family acipenseridae (sturgeon); all species of the genus lota (burbot or ling); and the species ictalurus punctatus (channel catfish).

Wild buffalo. Buffalo or bison which have not been reduced to captivity.

Nongame wildlife. Any wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean, or other wild animal not otherwise legally classified by statute or regulation of this state.

History: En. Sec. 1, Ch. 238, L. 1921; re-en. Sec. 3681, R.C.M. 1921; amd. Sec. 3, Ch. 77, L. 1923; amd. Sec. 12, Ch. 192, L. 1925; amd. Sec. 6, Ch. 59, L. 1927; amd. Sec. 1, Ch. 37, L. 1949; amd. Sec. 1, Ch. 36, L. 1951; amd. Sec. 1, Ch. 121, L. 1951; amd. Sec. 1, Ch. 19, L. 1953; amd. Sec. 1, Ch. 34, L. 1959; amd. Sec. 1, Ch. 11, L. 1965; amd. Sec. 1, Ch. 28, L. 1965; amd. Sec. 1, Ch. 46, L. 1971; Sec. 1, Ch. 189, L. 1971; amd. Sec. 1, Ch. 167, L. 1973; amd. Sec. 1, Ch. 27, L. 1974; amd. Sec. 1, Ch. 67, L. 1975; amd. Sec. 1, Ch. 93, L. 1975; amd. Sec. 1, Ch. 113, L. 1975; amd. Sec. 1, Ch. 235, L. 1977.

Amendments

Chapter 46, Laws of 1971, added "and all species of the genus acipenser (sturgeon)" to the definition of game fish; and made a minor change in phraseology.

Chapter 189, Laws of 1971, transferred mountain lion from the predatory animals paragraph to the game animals paragraph and made minor changes in punctuation and style.

The 1973 amendment deleted bison or buffalo from the definition of game animals; and added the final paragraph defining wild buffalo.

The 1974 amendment deleted "wolverine" from the definition of predatory animals; and made a minor change in phraseology.

Chapter 67, Laws of 1975, deleted "black-footed ferret" from the definition of "Fur-bearing animals" and deleted "wolf" from the definition of "Predatory animals."

Chapter 93, Laws of 1975, substituted "family acipenseridae" in the definition of "Game fish" for "genus acipenser"; added to the same definition "all species of the genus lota (burbot or ling); and the species ictalurus punctatus (channel catfish)"; and made minor changes in punctuation and a correction in spelling.

Chapter 113, Laws of 1975, added the definition of "Nongame wildlife."

The 1977 amendment transferred the bobcat to the definition of fur-bearing animals from the definition of predatory animals.

26-202. License required. It is unlawful for any person to:

(1) pursue, hunt, trap, take, shoot, or kill or attempt to trap, take,

shoot, or kill any game animal, any game bird, or any fur-bearing animal or take, kill, trap, or fish for any fish within this state or have, keep, or possess, within this state, any game animal, game bird, fur-bearing animal, game fish, or parts thereof, except as herein provided or as provided by the department; or

(2) pursue, hunt, trap, take, shoot, or kill or attempt to trap, take, shoot, or kill any game animal, game bird, or fur-bearing animal or take, kill, trap, or fish for any fish, except at the places and during the periods and in the manner herein defined or as defined by the department; or

(3) pursue, hunt, trap, take, shoot, or kill or attempt to trap, take, shoot, or kill any game animal, game bird, or fur-bearing animal or take, kill, trap, or fish for any fish within this state or have, keep, possess, sell, purchase, ship, or reship any imported or other fur-bearing animal or parts thereof, without first having obtained a proper license or permit from the department to do so.

History: En. Sec. 2, Ch. 238, L. 1921; re-en. Sec. 3682, R. C. M. 1921; amd. Sec. 13, Ch. 192, L. 1925; amd. Sec. 7, Ch. 59, L. 1927; amd. Sec. 3, Ch. 224, L. 1947; amd. Sec. 27, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977.

Amendments

The 1977 amendment inserted the subdivision designations; deleted "and a misdemeanor punishable as provided by section 26-324" after "unlawful" near the beginning of the section; and made minor changes in phraseology, punctuation and style.

26-202.1. Licenses—fees—classifications of licenses—fees and powers under licenses. (1) Class A License—Resident Fishing License. Any resident as defined by section 26-202.3, upon payment of a fee of \$5 shall receive a Class A license which shall entitle the holder thereof to fish with hook and line or rod as authorized by regulations of the department.

(2) Class A-1 License—Resident Game Bird License. Except as herein provided, any resident as defined by section 26-202.3, who is 12 years of age or older, may, upon payment of a fee of \$4 receive a Class A-1 license, which will entitle the holder to pursue, hunt, shoot and kill game birds and possess the dead bodies of game birds which are so authorized by regulations of the department.

(a) No hunting licenses shall be issued to any resident person under the age of 18 years unless he presents to the person authorized to issue such license a certificate of competency as provided by this section.

The department of fish and game shall provide for a course of instruction in the safe handling of firearms and for the purpose may cooperate with any reputable association or organization having as one of its objectives the promotion of safety in the handling of firearms. The department may designate any person found by it to be competent to give instructions in the handling of firearms. A person so appointed shall give such course of instruction and upon the successful completion thereof shall issue to the person instructed a certificate of competency in the safe handling of firearms.

(3) Class A-2 License—Special Bow and Arrow License. A holder of any one of the following: a Class A-3, A-4, A-5, B-2, B-5, B-6, B-7, B-8, or B-10 license, may upon payment of an additional sum of \$6 to any agent of

the department authorized to issue fishing and hunting licenses be entitled to a Class A-2 license, which shall authorize the holder thereof to pursue, hunt, shoot, and kill the game animals authorized by the licenses held with bow and arrow and to possess these carcasses during special seasons, and in special areas, as may be designated by the department.

(4) Class A-3, A-4, A-5, A-6 Licenses. Any resident as defined by section 26-202.3 who will be 12 years of age or older prior to September 15 of the season for which the license is issued, may upon payment of the proper fee or fees be entitled to purchase one each of the following licenses: Class A-3, Deer A Tag, \$6; for the license year beginning May 1, 1976, and \$7 for each license year thereafter; Class A-4, Deer B Tag, \$12; Class A-5 Elk Tag, \$8; Class A-6, Black or Brown Bear Tag, \$6; which will entitle the holder to pursue, hunt, shoot, and kill the game animal or animals authorized by the license held and to possess the dead bodies of game animals of the state which are so authorized by the regulation of the department.

(5) Class B License—Nonresident Fishing License. Any person not a resident as defined in section 26-202.3, upon payment of the sum of \$20 to any agent of the department authorized to issue fishing and hunting licenses, shall be entitled to a Class B license, which shall entitle the holder thereof to fish with hook and line as authorized by the rules and regulations of the department.

(6) Class B-1 License—Nonresident Game Bird License. Except as herein provided, any person not a resident as defined in section 26-202.3, but who is 12 years of age or older, upon payment of the sum of \$30 to any agent of the department authorized to issue fishing and hunting licenses shall be entitled to a Class B-1 license, which shall entitle the holder thereof to pursue, hunt, shoot, kill and possess game birds as authorized by the rules and regulations of the department.

No hunting licenses shall be issued to any nonresident person under the age of 18 years unless he presents to the person authorized to issue such license a certificate of competency as provided in section 26-202.1(2)(a) or a certificate verifying that he has successfully completed a course in the safe handling of firearms in any state or province.

(7) Class B-2 License—Nonresident Combination License. Within the limitations of this section or any department rule, any person not a resident as defined in section 26-202.3, but who will be 12 years of age or older prior to September 15 of the season for which the license is issued, upon the payment of \$50 may apply to the fish and game office, Helena, Montana for a Class B-2 license, and nonresident conservation license as prescribed in section 26-230, which shall authorize the holder to pursue, hunt, shoot, kill and possess game birds, and to fish with hook and line as authorized by the rules and regulations of the department, and to purchase additional and special licenses and tags as provided by law or department regulation.

(8) Class B-3 License—Temporary Nonresident or Tourist Fishing License. Any person not a resident as defined in section 26-202.3, upon payment of the sum of \$10 to any agent of the department authorized to issue fishing and hunting licenses, shall be entitled to a temporary nonresident fishing license, which shall authorize the holder to fish with hook

and line as authorized by the rules and regulations of the department for a period of 6 days inclusive of the dates indicated on the license.

(9) Class B-5 License—Nonresident Deer License. Any person not a resident as defined in section 26-202.3, but who will be 12 years of age or older prior to the season for which the license is issued and a holder of a nonresident conservation license, upon the payment of the sum of \$50 shall be entitled to a Class B-5 license which shall authorize the holder to pursue, hunt, shoot, and kill one deer in the area or areas designated in the license, as determined by the department, and to possess the carcass of same.

(10) Class B-6 License—Nonresident Antelope License. Any person not a resident as defined in section 26-202.3, but who will be 12 years of age or older prior to September 15 of the season for which the license is issued and a holder of a Class B-2 nonresident combination license, upon the payment of the sum of \$50 shall be entitled to a Class B-6 license which shall authorize the holder to pursue, hunt, shoot, and kill one antelope in the area designated in the license, as determined by the department, and to possess the carcass of same.

(11) Class B-7 and B-8 Licenses. Any person not a resident as defined in section 26-202.3, but who will be 12 years of age or older prior to September 15 of the season for which the license is issued, and is a holder of a B-2 nonresident combination license, may upon payment of the proper fee or fees and subject to the limitations prescribed by law and department regulation be entitled to apply to the Fish and Game Office, Helena, Montana, to purchase one each of the following licenses: Class B-7, Deer A Tag, \$50; Class B-8, Deer B Tag, \$50; and will entitle the holder to pursue, hunt, shoot, and kill the game animal or animals authorized by the license held and to possess the dead bodies of game animals of the state which are so authorized by the regulations of the department.

(12) B-10 Nonresident Big Game Combination License. Any person not a resident as defined in section 26-202.3, R.C.M. 1947, but who will be 12 years of age or older prior to September 15 of the season for which the license is issued may, upon payment of the proper fee or fees and subject to the limitations prescribed by law and department regulation, be entitled to apply to the fish and game office, Helena, Montana, to purchase a B-10 nonresident big game combination license for \$225 which shall entitle the holder to all the privileges of a B-2 nonresident combination license, a deer A tag, and elk tag and a black bear license. This license includes the nonresident conservation license as prescribed in section 26-230, R.C.M. 1947.

(13) Special Licenses. (a) Any applicant who is 12 years of age or older and is a resident as defined by section 26-202.3, or any applicant who is the holder of a Class B-2 nonresident combination license may apply for a special license, which in the judgment of the department, is to be issued and shall pay the following fees therefor:

Moose, resident \$25, nonresident \$125;

Mountain Goat, resident \$15, nonresident \$75;

Mountain Sheep, resident \$25, nonresident \$125;

Antelope, resident \$5;

Grizzly Bear, resident, \$25, nonresident \$125;
Black or Brown Bear, nonresident \$50.

In the event a holder of a valid special grizzly bear license kills a grizzly bear, he must purchase a trophy license for a fee of \$25 within 10 days after date of kill. Such trophy license shall authorize the holder to possess and transport said trophy.

In the event that the number of valid resident applications for licenses exceeds the number of licenses which the department desires to issue in any hunting district, then the number of licenses issued to nonresident license holders in that hunting district shall not exceed 10% of the total issued.

(b) A person who will be 12 years of age or older prior to September 15 of the season for which the license is issued may apply for a special antelope license.

(14) Class C License—Trapper's License. Any resident as defined in section 26-202.3, upon making application and paying the sum of \$10 to the department, shall be entitled to a trapper's license, which shall authorize the holder thereof to trap fur-bearing animals and hunt bobcat, within the state of Montana at such times and in such manner as may be lawful so to do under the laws of the state and the regulations of the department, and at such places as may be designated in said license.

(15) Class C-1 License—Landowner's Trapping License. Any owner or tenant, or member of the immediate family of said owner or tenant, upon making application to the department, and upon payment of the sum of \$1 shall be entitled to a landowner's trapping license which shall entitle the holder thereof to trap any fur-bearing animal on land owned or leased by him, or his immediate family, at such times and in such manner as may be lawful so to do under the laws of the state and the regulations of the department and at such places as may be designated in said licenses.

(16) Exception. (a) A resident under the definition of section 26-202.3, who is 62 years or older shall be entitled to fish and hunt game birds with a conservation license issued by the department for a fee of \$1. The form of such license shall be prescribed by the department.

(b) Any veteran who is a patient residing at a hospital operated by the veterans administration, within or outside the state, and residents of all institutions under the jurisdiction of the state board of institutions, except the Montana state prison at Deer Lodge, will be entitled to fish without a license. Such residents shall carry a permit on a form prescribed by the department and signed by the superintendent of the institution in lieu of a license.

(c) Disabled persons are entitled to fish without a license, if they are residents of Montana not residing in an institution and are certified as disabled by a licensed medical doctor, licensed to practice medicine in Montana.

Disability is defined as a physical or mental condition that prevents a person from doing any substantial gainful work that is expected to last for the rest of their life.

Such disabled persons shall carry a permit on a form prescribed by the department.

(d) If a person is convicted of a violation of the fish and game laws or regulations of Montana, the privilege conferred by this subsection shall be revoked for not less than 6 months.

(e) Residents, as defined by section 26-202.3, under the age of 15 years may purchase Class A-1, A-3, and A-5 licenses at \$2 per license.

(f) The department, by rule or regulation, may prescribe the number of Class B-5 and B-6, B-7, B-8, or B-10 licenses to be issued in each of the hunting districts designated by it. Any license sold may be restricted to a specific hunting area and may specify the species, age, and sex to be taken in order to insure the proper management and propagation of game animals in these areas, provided, however, that no number limit shall be placed on B-7, B-8 and B-10 license by area except in major hunter concentration areas as determined by the department. Not more than 17,000 nonresident big game combination licenses (B-10) may be sold in any one license year.

(g) Special Antelope Licenses. In the event the number of valid applications for special antelope licenses for a hunting district exceeds the quota set by the department for the district, such licenses shall be awarded by a drawing. Persons making valid application who did not receive an antelope license during the season immediately preceding the drawing shall be given first preference in such drawing for first, second and third choice hunting districts. The department shall have the authority to promulgate such rules and regulations as are necessary to implement this subsection.

(h) Special Elk Permits. In the event the number of valid applications for special elk permits for a hunting district exceeds the quota set by the department for the district, these permits shall be awarded by a drawing. Persons making valid application who did not receive a special elk permit during the season immediately preceding the drawing shall receive first preference in this drawing for first, second, and third choice hunting districts. The department may promulgate the rules necessary to implement this subsection.

(17) Only one license of any one class, except Class B-3 and B-4 licenses, shall be issued to any one person, provided, however, that the department may prescribe rules and regulations for the issuance or sale of a replacement license of the same class in the event the original license is lost, stolen or destroyed upon payment of the sum of \$1.

(18) Class AAA License—Sportsman's License. Any resident, as defined by section 26-202.3, who will be 12 years of age or older prior to September 15 of the season for which the license is issued, upon payment of the sum of \$35 shall be entitled to a sportsman's license which shall permit the holder to exercise all rights granted to holders of Class A, A-1, A-3, A-5, A-6 and resident conservation licenses as prescribed in section 26-230. The department shall furnish each holder of a sportsman's license an appropriate decal.

(19) Class D-1 License—Nonresident Mountain Lion License. Any person not a resident as defined in section 26-202.3, but who is 12 years of

age or older and a holder of a nonresident Class B-2 combination license, upon payment of the sum of \$25 to any agent of the department authorized to issue fishing and hunting licenses shall be entitled to a Class D-1 license, which shall entitle the holder thereof to pursue, hunt, shoot, kill and possess mountain lion as authorized by the rules and regulations of the department.

(20) Class D-2 License—Resident Mountain Lion License. Any person who is a resident as defined in section 26-202.3, and who is 12 years of age or older, upon payment of the sum of \$5 to any agent of the department authorized to issue fishing and hunting licenses shall be entitled to a Class D-2 license, which shall entitle the holder thereof to pursue, hunt, shoot, kill and possess mountain lion as authorized by the rules and regulations of the department.

(21) Special Elk or Deer Licenses. (a) Any person who is the holder of a valid resident elk license or a Class B-10 nonresident big game combination license may apply for a special elk license upon payment of a fee of \$1.

(b) Any person who is the holder of a valid resident deer license or any nonresident who holds a Class B-2 license and a valid deer tag may apply for a special deer license upon payment of a fee of \$1.

(c) The department shall have the authority to promulgate such rules and regulations as are necessary to implement this subsection.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 169 and once by Ch. 235. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

The 1969 amendment inserted "a Class A-1 license and any one of" before "the following" in subsection (3) and revised subsection (14) by substituting "and hunt game birds * * * game commission" for "without a Class A license and hunt game birds without a Class A-1 license. He shall carry proof of age in lieu of the license"

in subdivision (a), by substituting the provisions of subdivision (b) for "A child residing at the Montana children's center at Twin Bridges and the committed resident of the Montana training center at Boulder will be entitled to fish without a license. He shall carry a written statement by the superintendent of the center in lieu of the license," by inserting the provisions of subdivision (c), and by designating former subdivisions (c) to (f) as (d) to (g).

The 1971 amendment inserted in subsection (4) the provisions for class A-6 licenses; deleted from the end of subsection (4) a sentence reading "Any holder of a class A-3, A-4, or A-5 license shall further be entitled to pursue, hunt, shoot and kill black or brown bear and possess the dead bodies of black or brown bear which are so authorized by regulations of the commission;" increased the resident grizzly bear fee specified in subsection (11) from one dollar to five dollars; increased the nonresident grizzly bear fee from \$25.00 to \$35.00; inserted in subsection (11) the provision relating to black or brown bear fees; deleted from the end of subsection (11) a sentence reading "Any holder of a special license as herein provided shall be further entitled to pursue, hunt, shoot and kill black or brown bear and possess the dead bodies of black or brown bear which are so authorized by regulations of the commission;" and inserted the reference to class A-6 licenses in the first sentence of subsection (16).

Chapter 110, Laws of 1973 inserted "Except as herein provided" at the beginning of the first paragraph of subsection (6); and added the second paragraph to subsection (6).

Chapter 139, Laws of 1973 added subsections (17) and (18).

Chapter 167, Laws of 1973, deleted the clause under subsection (11) which provided for bison or buffalo licenses.

Chapter 261, Laws of 1973, reduced the age specified in the first sentence of subdivision (14) (a) from sixty-five to sixty-two years.

Chapter 408, Laws of 1973, increased license fees in subsection (1) from \$4.00 to \$5.00, in subsection (5) from \$15 to \$20, and in subsection (8) from \$5.00 to \$10.

Chapter 49, Laws of 1975, inserted subdivision (16)(c) relating to disabled persons.

Chapter 91, Laws of 1975, deleted "except beaver" after "trap any fur-bearing animal" in subsection (15); and made minor changes in phraseology.

Chapter 289, Laws of 1975, substituted "conservation license" for "pioneer license" in subdivision (16)(a) and increased the fee therefor from 15¢ to \$1.00; inserted the clause relating to fishing licenses for hospitalized veterans at the beginning of subdivision (16)(b); and deleted former subdivision (16)(c) which provided that hospitalized veterans could obtain fishing licenses for 15¢.

Chapter 417, Laws of 1975, added subdivision (16)(h) relating to special elk permits.

Chapter 546, Laws of 1975, increased the fee specified in subsection (2) for a resident game bird license from \$2.00 to \$4.00; inserted "B-7, B-8, or B-10" in subsection (3) and increased the "additional sum" from \$3.00 to \$6.00; substituted near the end of subsection (3) "and kill the game animals authorized by the licenses held with bow and arrow and to possess these carcasses during special seasons" for "and kill deer, antelope and elk with bow and arrow and to possess the carcass of deer, antelope and elk during a special season"; substituted in subsection (4) "Class A-3, Deer A Tag, six dollars (\$6) for the license year * * * which will entitle the holder" for "Class A-3, Deer A Tag, three dollars (\$3); Class A-4, Deer B Tag, five dollars (\$5); Class A-5 Elk Tag, three dollars (\$3); Class A-6, Black or Brown Bear Tag, five dollars (\$5); which will entitle the holder"; increased the nonresident game bird licenses in subsection (6) from \$25 to \$30; rewrote subsection (7) (for prior version see parent volume); inserted "and a holder of a nonresident conservation license" in subsection (9) and increased the fee from \$35 to \$50; inserted in subsection (10) "and a

holder of a Class B-2 nonresident combination license" and increased the fee from \$35 to \$50; inserted subsections (11) and (12) and redesignated the remaining subsections accordingly; inserted in the first paragraph of subsection (13) "twelve (12) years of age or older" and substituted "combination license" for "big game license"; increased in subsection (13) the resident fees for antelope (\$3 to \$5) and grizzly bear (\$5 to \$25), and the nonresident fees for moose (\$50 to \$125), mountain goat (\$30 to \$75), mountain sheep (\$50 to \$125), grizzly bear (\$35 to \$125), and black or brown bear (\$35 to \$50); substituted "valid resident applications for licenses" at the beginning of the last paragraph of subsection (13) for "valid applications for special licenses"; deleted "special" before "licenses" in two places in the last paragraph of subsection (13); substituted "nonresident license holders in that hunting district" in the last paragraph of subsection (13) for "holders of Class B-2 nonresident big game licenses"; deleted "A-4" from the classes of licenses specified in subdivision (16)(e) and substituted "licenses at two dollars (\$2) per license" for "licenses for one-half (1/2) of the fees prescribed in this section"; inserted "B-7, B-8, or B-10" among the licenses specified in the first sentence of subdivision (16)(f) and added the second and third sentences; increased the sportsman's license fee in subsection (18) from \$20 to \$35 and inserted "and resident conservation licenses as prescribed in section 26-230"; inserted "and a holder of a nonresident Class B-2 combination license" in subsection (19); added subsection (21); and made minor changes in phraseology, punctuation and style throughout the section.

Chapter 169, Laws of 1977, inserted "prior to September 15 of the season for which the license is issued" near the beginning of subsections (4), (7), (10), (11), (12), and (18); inserted "prior to the season for which the license is issued" after "older" near the beginning of subsection (9); designated former subsection (13) as (13)(a); added subsection (13)(b); and made minor changes in phraseology and style.

Chapter 235, Laws of 1977, inserted "and hunt bobcat" near the middle of subsection (14).

Effective Date

Section 2 of Ch. 110, Laws of 1973 provided the act should be in effect from and after its passage and approval. Approved March 5, 1973.

Constitutionality

The disparity in the treatment of residents and nonresidents under this section

was not an unconstitutional discrimination, because it infringed upon no fundamental rights and therefore did not violate the due process or equal protection clauses; nor was the right to hunt for sport a privilege or immunity of citizens of the several states which Montana was required to grant equally to residents and nonresidents under Article IV, § 2 of the federal constitution. *Montana Outfitters Action Group v. Fish and Game Commission*, 417 F Supp 1005.

Subd. 4**Tagging Game Killed by Another**

Tagging of game animal that someone else has killed or so far brought under control that one can walk up to it and cut its throat is not method of acquiring ownership contemplated by statute authorizing licensed hunter to pursue, hunt, shoot and kill game animal and then to possess carcass with result that person tagging illegally killed elk is not entitled to possession. *State ex rel. Visser v. State Fish and Game Commission*, 150 M 525, 437 P 2d 373.

26-202.2. Restrictions on special licenses. (1) Special licenses authorized to be issued under the general powers of the department may be issued only to persons holding valid big game licenses for the current year, which have been obtained by the applicant prior to the time of filing of application for a special license.

(2) A person who has obtained a grizzly bear, moose, mountain goat, or mountain sheep license is not eligible to apply for another such license for the next succeeding 7 years if such person has killed or taken an animal of the species for which the special license was issued. A person who has obtained a grizzly bear, moose, mountain goat, or mountain sheep license but did not kill or take an animal of the species for which the special license was issued is eligible to apply for another such license in any succeeding year if he returns his unused special license to the department before or at the time application is made. A person who has received a special license for elk is not eligible to receive a second special license for this species of game animal during any license year. However, in the event the number of applications received is not equal to the number of game species desired to be killed by the department, reapplication may be made by those valid license holders of the current year who may fall within these limitations. A person who has killed or taken a game animal, except a deer, during the current license year is not permitted to receive a special license under this chapter to hunt or kill a second game animal of the same species.

(3) Every license issued by the department authorizing the holder thereof to pursue, shoot, kill, capture, take, or possess game animals, whether issued to a resident or a nonresident, shall provide such tags, coupons, or markers as the department prescribes, and when any person takes or kills any game animal under the license, the person shall immediately thereafter cut out from the tag, coupon, or other marker the date the animal was killed or taken and attach the tag, coupon, or other marker to the animal, completely filled out with the name of the license holder, his address, and any other information requested on the tag, coupon, or other marker. Such tag, coupon, or other marker shall be kept attached to the carcass so long as any considerable portion of the carcass remains unconsumed, and when the proper tag, coupon, or other marker is attached to the game animal so killed, the same may be possessed, used, stored, and transported. It is unlawful for a person, who kills any game animal by

authority of any license issued for the killing of the game animal, to fail or neglect to cut out the day and month of the kill or provide such other information as is required and attach his tag, coupon, or other marker so provided with the license issued to the carcass of the game animal or portion thereof. It is unlawful for a person to fail to keep the tag, coupon, or other marker attached to the game animal or portion thereof while the same is possessed by him.

History: En. Sec. 2, Ch. 267, L. 1955; amd. Sec. 1, Ch. 65, L. 1963; amd. Sec. 1, Ch. 72, L. 1969; amd. Sec. 1, Ch. 48, L. 1971; amd. Sec. 3, Ch. 167, L. 1973; amd. Sec. 1, Ch. 195, L. 1973; amd. Sec. 28, Ch. 9, L. 1977.

Amendments

The 1969 amendment deleted "or antelope" after "deer" in the last sentence of subsection (2) and rewrote the provisions of subsection (3) to substitute references to "game animal" for "deer, elk, moose or antelope" and to require the date and month of kill to be cut out of the game tag.

The 1971 amendment inserted "grizzly bear" in the first and second sentences of subsection (2).

Chapter 167, Laws of 1973, deleted references to bison or buffalo licenses from the first and second sentences of subsection (2).

Chapter 195, Laws of 1973, substituted "department of fish and game" for "fish and game commission" in subsections (1) and (2); substituted "department" for "commission" in subsections (2) and (3); and inserted "mountain goat" in two places in subsection (2).

The 1977 amendment deleted "of fish and game" after "department" in each the first sentence of subsection (1) and the second sentence of subsection (2); deleted "Tagging of carcasses of game animals" at the beginning of subsection (3); inserted "It is unlawful for" at the beginning of the last two sentences in subsection (3); deleted "shall be guilty of a misdemeanor and upon conviction thereof shall be punished as provided for by law in section 26-324" at the end of subsection (3); and made minor changes in phraseology and punctuation.

Effective Date

Section 2 of Ch. 72, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 24, 1969.

Subd. 3

Tagging Game Killed by Another

Under statute requiring tagging, word "take" does not mean that one can tag animal someone else has killed, so that if one person illegally killed elk another person cannot gain ownership by tagging it and ownership of elk remains in state. State ex rel. Visser v. State Fish and Game Commission, 150 M 525, 437 P 2d 373.

26-202.3. Defining resident. That in determining a resident for the purpose of issuing resident fishing and hunting licenses, the following provisions shall apply:

(1). * * * [Same as parent volume.]

(2) Any person who has been a resident of the state of Montana, as defined in section 83-303, for a period of six (6) months immediately prior to making application for said license shall be eligible to receive a resident hunting or fishing license.

(3). * * * [Same as parent volume.]

History: En. Sec. 3, Ch. 267, L. 1955; amd. Sec. 1, Ch. 106, L. 1959; amd. Sec. 1, Ch. 72, L. 1961; amd. Sec. 1, Ch. 28, L. 1963; amd. Sec. 1, Ch. 33, L. 1967; amd. Sec. 1, Ch. 37, L. 1967; amd. Sec. 1, Ch. 283, L. 1973.

Amendments

The 1973 amendment substituted "person" for "citizen of the United States of America" at the beginning of subdivision (2).

26-202.4. Power of department of fish and game to make rules and regulations.

Compiler's Notes

Section 13, Ch. 417, Laws 1977, substituted references to the department of fish

and game in this section for references to the fish and game commission.

26-202.5. Nonresident bear license. (1) The department may issue special licenses, as provided in 26-104.3, to nonresidents to hunt black or brown bear, including any color phase of black bear. The special nonresident license shall be valid only for the area designated on the license and shall expire on August 31 of each year. The fee for the special nonresident license shall be \$35. There shall be a permit included with the special nonresident license to authorize the holder thereof to ship, transport, or remove out of state any bear or part thereof taken under authority of the license.

(2) The department is authorized to promulgate rules relative to tagging, possession, or transportation of bear within or without the state.

History: En. Sec. 1, Ch. 239, L. 1965; amd. 2, Sec. 319, L. 1967; amd. Sec. 4, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977.

provided in 26-104.3" in the first sentence of subsection (1) for "in the manner provided in subsection 15 of section 26-104"; deleted "and regulations" after "rules" in subsection (2); and made minor changes in phraseology, punctuation and style.

Amendments

The 1977 amendment substituted "as

26-202.6. Nonresident one (1) day fishing license (Class B-4). Any person not a resident as defined in section 26-202.3, R.C.M. 1947, who is a holder of a valid wildlife conservation license, upon payment of the sum of two dollars (\$2) to any agent of the department authorized to issue fishing and hunting licenses, shall be entitled to a one (1) day nonresident fishing license, which shall authorize the holder to fish with hook and line as prescribed by rules and regulations of the department for one (1) calendar day as indicated on the license.

History: En. Sec. 1, Ch. 117, L. 1969; amd. Sec. 2, Ch. 408, L. 1973; amd. Sec. 13, Ch. 417, L. 1977.

Amendments

The 1973 amendment increased the license fee from \$1.00 to \$2.00.

Title of Act

An act to provide for a one (1) day nonresident fishing license to be issued by the state fish and game commission.

Effective Date

Section 2 of Ch. 117, Laws 1969 read "This act shall be in full force and effect from and after May 1, 1969."

26-202.7. Special elk permits—power of department.—(1) The department may: (a) provide for the refund of resident elk tag license fees to persons applying for special elk permits in hunting districts where there is no general elk hunting, and may set time limits and describe area restrictions;

(b) designate special elk permit areas where priority will be given to applicants who have not held special elk permits for a period of years be determined by the department.

(2) The department may adopt rules necessary to implement this section.

History: En. 26-202.7 by Sec. 2, Ch. 546, L. 1975; amd. Sec. 13, Ch. 417, L. 1977.

Title of Act

An act to amend section 26-202.1, R. C.

M. 1947, to provide a fee increase in the resident and nonresident hunting licenses; to change the Class B-2 nonresident big game license to Class B-2 nonresident combination bird and fish license and make it a prerequisite to purchase hunting tags; to provide for classification of nonresident deer tags; to provide for B-10 nonresident big game combination license; to limit the total number of nonresident big game combination licenses sold in a license year; to include the nonresident conservation license as part of the Class B-2 li-

cense and the resident conservation license as part of the Class AAA license; to give the commission authority to limit the number of licenses sold in designated hunting districts; to provide a fee for special elk and deer drawings; to provide for a special nongame certificate; and to provide a delayed effective date.

Effective Date

Section 4, Ch. 546, Laws 1975 read "This act shall be effective May 1, 1976."

26-202.8. Nongame certificate. (1) In order to promote the preservation and management of nongame wildlife within the state, the department may issue a nongame certificate or window decal indicating that the holders of the certificates are supporting the natural resource interests of the state of Montana.

(2) The form of the certificates or window decals shall be determined by the department and the inscription upon it shall indicate that no hunting, fishing or trapping privilege is thereby conferred.

(3) These certificates shall be sold for an annual fee of five dollars (\$5).

(4) The proceeds collected from the sale of the certificates shall be deposited in the fish and game fund and be expended for the management, preservation, and propagation of all species of nongame wildlife in the state of Montana.

History: En. 26-202.8 by Sec. 3, Ch. 546, L. 1975; amd. Sec. 13, Ch. 417, L. 1977.

Effective Date

Section 4, Ch. 546, Laws 1975 read "This act shall be effective May 1, 1976."

26-204. Application for license. (1) A license may be procured from the director, any warden, or any authorized agent of the director. The applicant shall state his name, age, occupation, place of residence, post-office address, the length of time in the state of Montana, whether a citizen of the United States or an alien, and such other facts, data, or descriptions as may be required by the department. The statements made by the applicant shall be subscribed to before the officer or agent issuing the license.

(2) It is unlawful to subscribe to any application containing a material false statement. Any material false statement contained in an application renders it and any license issued pursuant to it void. Any person violating any provision of this statute is guilty of a misdemeanor.

History: En. Sec. 4, Ch. 238, L. 1921; re-en. Sec. 3684, R. C. M. 1921; amd. Sec. 1, Ch. 84, L. 1947; amd. Sec. 1, Ch. 157, L. 1969; amd. Sec. 5, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977.

Amendments

The 1969 amendment substituted "director" for "warden" and deleted "deputy" before "state fish and game warden" in the first sentence and deleted "and sworn" after "subscribed" in the last sentence of

the first paragraph and rewrote the second paragraph which read: "Any person who shall swear or affirm to any false statement in the application for a hunting or fishing license, shall be guilty of a misdemeanor, and on conviction thereof, shall be punished as provided in section 26-324."

The 1977 amendment inserted the subsection designations; substituted "A license may" at the beginning of subsection (1) for "Such license shall"; deleted "state

game and fish" before "director" both times it appears and before "warden" in the first sentence of subsection (1); deleted "null and" before "void" in the second sentence of subsection (2); and made minor changes in phraseology and punctuation.

Effective Date

Section 2 of Ch. 157, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 28, 1969.

26-209. (3685.4) Repealed.

Repeal

Section 26-209 (Sec. 5, Ch. 41, L. 1935), saving existing provisions for Class B

nonresident fishing licenses, was repealed by Sec. 58, Ch. 511, Laws 1973.

26-210. Bounty claims for wild animals—approval and payment. (1) The department shall pay bounty claims for wild animals which have been filed with and approved by the board of livestock. The department shall pay out of the state fish and game funds, other than those funds derived from license fees paid by hunters and fishermen, bounties on predatory wild animals, as the bounty claims are presented, not exceeding seven thousand five hundred dollars (\$7,500) per calendar year.

(2) The board of livestock shall, after approving the bounty claim, deliver the claim to the department for rejection or approval. If the claim or certificate is rejected it shall be returned by the department to the board of livestock. If approved, it shall be delivered to the department of administration for allowance or disallowance. Nothing in this section takes from the department of fish and game the exclusive power to administer the fish and game moneys at its discretion.

(3) If the department of administration allows the claim, it must send it to the auditor. The auditor must draw his warrant on the state fish and game moneys in the earmarked revenue fund for the amount approved in favor of the claimant, in the order in which the claim is approved.

History: En. Sec. 2, Ch. 174, L. 1939; amd. Sec. 23, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977.

Amendments

The 1973 amendment numbered the subsections; substituted "by the board of livestock" for "in the office of the livestock commission" throughout the section; substituted "department of administration" for "state board of examiners" near the end of the third sentence in subsection (2) and in the first sentence of subsection (3); deleted "or certificate,

they must endorse thereon over their signatures, 'Approved for the sum of _____ dollars,' and" following "department of administration allows the claim" in the first sentence of subsection (3); substituted "fish and game moneys in the earmarked revenue fund" in the second sentence of subsection (3) for "fish and game funds"; deleted "or his assigns" following "in favor of the claimant" in the second sentence of subsection (3); and made minor changes in style, phraseology and punctuation.

26-212, 26-212.1.

Compiler's Notes

Section 13, Ch. 417, Laws 1977, substituted references to the department of fish

and game in these sections for references to the fish and game commission.

26-213. (3689) Carrying and exhibiting license. It is unlawful for any person to whom a license or permit has been issued to fish for or take any fish or pursue, hunt, shoot, kill, or take any game bird or game animal

or attempt to trap, trap, or take any fur-bearing animal in this state unless he has the license, licenses, or permit in his possession at the time. It is unlawful to refuse to exhibit a license or permit for inspection to a warden or other officer requesting to see it.

History: En. Sec. 9, Ch. 238, L. 1921; re-en. Sec. 3689, R. C. M. 1921; amd. Sec. 10, Ch. 59, L. 1927; amd. Sec. 4, Ch. 224, L. 1947; amd. Sec. 24, Ch. 511, L. 1973; amd. Sec. 29, Ch. 9, L. 1977.

Amendments

The 1973 amendment substituted "a warden" for "any deputy state fish and

game warden" at the end of the second sentence; and made minor changes in style and phraseology.

The 1977 amendment deleted "and a misdemeanor punishable as provided by section 26-324" after "unlawful" near the beginning of the first sentence; and made minor changes in punctuation and phraseology.

26-215. (3691) Spotlighting unlawful—exemptions for minors from license requirements. (1) It is unlawful for any person or one or more of a group of persons together to throw or cast the rays of a spotlight having a luminance of greater than .75 candlepower attached to or cast from a motorized vehicle into any field, pasture, woodland, forest, or prairie wherein wildlife or domestic livestock may be or may be reasonably expected to be, while having in his possession or their possession or under control a firearm or other implement whereby any wildlife or domestic animal could be killed by aid of an artificial light; except that all officers authorized to enforce the game and livestock laws of the state of Montana and all landowners, lessees, or their agents, while on their own lands in connection with their legitimate activities, and employees of such landowners, lessees, and agents are exempt from the provisions of this section.

(2) The provisions of this section do not apply where the headlights of a motor vehicle, operating and proceeding in a normal manner on any highway or roadway, cast a light upon such animal on or adjacent to the highway or roadway and there is no intent or attempt to locate that animal.

(3) Minors under 15 years of age may fish for and take fish during the open season without a license. However, no nonresident person under the age of 15 years may fish in or on any Montana waters without first having obtained a Class B, B-2, or B-3 fishing license unless the nonresident person under the age of 15 years is in the company of an adult in possession of a valid Montana fishing license. The limit of fish for the nonresident person and the accompanying adult, combined, may not exceed the limit for one adult as established by law or by rule of the department.

(4) A person convicted of violating subsection (1) of this section shall be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months or both.

History: En. Sec. 11, Ch. 238, L. 1921; re-en. Sec. 3691, R.C.M. 1921; amd. Sec. 11, Ch. 59, L. 1927; amd. Sec. 3, Ch. 161, L. 1931; amd. Sec. 2, Ch. 148, L. 1963; amd. Sec. 1, Ch. 48, L. 1965; amd. Sec. 1, Ch. 26, L. 1967; amd. Sec. 1, Ch. 309, L. 1971; amd. Sec. 1, Ch. 369, L. 1975; amd. Sec. 6, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977.

Amendments

The 1971 amendment substituted "pred-

atory mammals" for "predatory animals" in subsection (1); substituted "house sparrows" for "English sparrows" in subsection (1); deleted "hawks, fish ducks, blue heron, snow owls, great grey owls, great horned owls," "kingfishers," and "jays and eagles" from subsection (1); inserted "starlings and rock doves" in subsection (1); and made a minor change in phraseology.

The 1975 amendment redesignated subsections (a) to (c) as subsections (1) to

(3); rewrote subsections (1) and (2); and added subsection (4). For prior versions, see parent volume and 1971 amendment note.

The 1977 amendment substituted "this section" at the end of subsection (1) for

"this act"; substituted "rule" in the last sentence of subsection (3) for "regulation"; substituted "subsection (1)" in subsection (4) for "subsection (2)"; and made minor changes in style, punctuation and phraseology.

26-217. (3692) Alteration or transfer of license. No person may at any time alter or change in any material manner or loan or transfer to another any license, nor may any person other than the person to whom it is issued use it.

History: En. Sec. 12, Ch. 238, L. 1921; re-en. Sec. 3692, R. C. M. 1921; amd. Sec. 1, Ch. 149, L. 1955; amd. Sec. 7, Ch. 9, L. 1977.

Amendments

The 1977 amendment deleted "issued in pursuance to the provisions of this act" after "license"; deleted the last two sentences as they appear in the parent volume; and made minor changes in punctuation and phraseology.

26-220. License agents—appointment. The director may appoint license agents as needed to sell state hunting and fishing licenses and any permits or certificates prescribed by the department, according to rules adopted by the department.

History: En. Sec. 1, Ch. 88, L. 1947; amd. Sec. 1, Ch. 156, L. 1949; amd. Sec. 25, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 7, Ch. 421, L. 1977.

Amendments

The 1973 amendment substituted "director" for "state fish and game warden"; and made minor changes in phraseology.

The 1977 amendment inserted "and any permits or certificates prescribed by the commission."

26-221. Bond of license agent—preferred claim of state for license money. (1) An appointed license agent shall furnish a corporate surety bond of one thousand dollars (\$1,000), or in an amount equal to the value of the licenses, permits, and certificates received for distribution, the amount to be fixed at the discretion of the director. The bond shall secure the faithful performance of the duties imposed on the license agent and the accounting for and payment to the state of all moneys received from the sale of hunting and fishing licenses and any permits or certificates prescribed by the commission. The license agent shall properly account for all unsold licenses, permits, and certificates, annually on April 1, or at any other time at the request of the director.

(2) All money received for the sale of licenses, permits, and certificates at all times belongs to the state. In case of an assignment for the benefit of creditors, receivership, or bankruptcy, the state has a preferred claim against the assets and estate of a license agent for all moneys owed the state.

History: En. Sec. 2, Ch. 88, L. 1947; amd. Sec. 1, Ch. 156, L. 1949; amd. Sec. 26, Ch. 511, L. 1973; amd. Sec. 8, Ch. 421, L. 1977.

Amendments

The 1973 amendment numbered the subsections; substituted "director" for "state

fish and game warden" at the end of the first and third sentences in subsection (1); and made minor changes in style, phraseology and punctuation.

The 1977 amendment inserted the references to permits and certificates throughout the section.

26-222. Compensation—duties. (1) License agents, except salaried employees of the department, shall receive for all services rendered the sum of fifteen cents (15¢) for each license, permit, or certificate issued. On or before the 10th day of each month each license agent shall submit to the department all duplicates of each class of licenses sold during the preceding month and shall accompany the duplicate licenses with all moneys received for the sale of the licenses, less a fee of fifteen cents (15¢) for each license sold. Each license agent shall keep his license account open at all reasonable hours to inspection by the department, the director, the wardens, or the legislative auditor.

(2) For purposes of this section, the term “license” includes any license, permit, and certificate prescribed by the department.

History: En. Sec. 3, Ch. 88, L. 1947; amd. Sec. 1, Ch. 156, L. 1949; amd. Sec. 1, Ch. 31, L. 1959; amd. Sec. 27, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 9, Ch. 421, L. 1977.

Amendments

The 1973 amendment substituted “employees of the department” for “deputy fish and game wardens (state fish and game wardens)” in the first sentence;

substituted “department” for “state fish and game warden (director)”; and substituted “the director, the wardens, or the legislative auditor” for “the state fish and game warden (director), or his deputies (wardens), or the state examiner” at the end of the third sentence.

The 1977 amendment inserted the subsection designations; inserted “permit, or certificate” in the first sentence of subsection (1); and added subsection (2).

26-223. Appointments nontransferable — revocation — oaths. Appointments of license agents shall be nontransferable, and each appointment shall be valid only at the single location of the business as stated on the certificate of appointment. Such appointments may be summarily revoked at any time by the state fish and game director upon discontinuance of the business at the stated location or for noncompliance with the provisions of this act or other regulations. Duly appointed license agents are hereby authorized to administer oaths to applicants for hunting and fishing licenses and for other permits and certificates prescribed by the commission.

History: En. Sec. 4, Ch. 88, L. 1947; amd. Sec. 1, Ch. 156, L. 1949; amd. Sec. 1, Ch. 7, L. 1969; amd. Sec. 10, Ch. 421, L. 1977.

Amendments

The 1969 amendment rewrote this section to restrict the operation of license agents to a single business location as stated in the certificate of appointment.

The 1977 amendment added “and for other permits and certificates prescribed by the commission” at the end of the section.

Effective Date

Section 2 of Ch. 7, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved January 29, 1969.

26-224. Repealed.

Repeal

Section 26-224 (Sec. 5, Ch. 88, L. 1947; Sec. 1, Ch. 156, L. 1949), relating to prior

appointments of license agents, was repealed by Sec. 58, Ch. 511, Laws 1973.

26-225, 26-226.

Compiler's Notes

Section 13, Ch. 417, Laws 1977, substituted references to the department of fish

and game in these section for references to the state fish and game commission.

26-228. Rules to implement reciprocal agreements—violations. The department is authorized to establish rules for the purpose of implementing agreements established under 26-225. It is unlawful to violate any orders or rules promulgated by the department under 26-225 through 26-228.

History: En. Sec. 4, Ch. 14, L. 1965; amd. Sec. 30, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977.

Amendments

The 1977 amendment deleted “and reg-

ulations” after “rules” in the first sentence; substituted the present second sentence for the second sentence appearing in the bound volume; and made minor changes in phraseology.

26-229. Wildlife conservation license required for purchase of hunting, fishing or trapping license. It shall be unlawful for any person or persons to purchase any hunting, fishing or trapping license without first having obtained a wildlife conservation license as hereinafter provided.

History: En. Sec. 1, Ch. 172, L. 1969.

Title of Act

An act requiring persons purchasing hunting, fishing and trapping licenses to possess a wildlife conservation license, and

providing that fees for such purchases be deposited with the state treasurer in the earmarked revenue fund to the credit of the state fish and game commission in accordance with the provisions of section 26-121, R. C. M. 1947.

26-230. Application — stamp attachment — fee — expiration. (1) A wildlife conservation license shall be sold upon written application. The application shall contain the applicant's name, age, occupation, place of residence, post-office address, and length of time in the state of Montana; state whether the applicant is a citizen of the United States or an alien; and be subscribed by the applicant. The applicant shall present a driver's license or other identification to substantiate the information.

(2) Hunting, fishing, or trapping licenses in the form of tags or stamps issued to a holder of a wildlife conservation license must be affixed to or recorded on the wildlife conservation license according to such rules as the department may prescribe.

(3) Resident and nonresident wildlife conservation licenses may be purchased for a fee of \$1.

(4) Licenses issued shall be void after April 30 next succeeding their issuance.

History: En. Sec. 2, Ch. 172, L. 1969; amd. Sec. 2, Ch. 289, L. 1975; amd. Sec. 8, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977.

Amendments

The 1975 amendment substituted the third sentence for a sentence reading “Residents as defined by section 26-202.3, may purchase a resident's license for a fee of twenty-five cents (\$.25) and all others a nonresident's license for a fee of one dollar (\$1).”

The 1977 amendment inserted the subsection designations; substituted “the application shall contain the applicant's” at the beginning of the second sentence of subsection (1) for “in such form and containing his”; substituted “rules” in subsection (2) for “regulations”; and made minor changes in phraseology, punctuation and style.

26-231. Unlawful sales of hunting, fishing or trapping licenses. It shall be unlawful for any license agent to sell any hunting, fishing or trapping

license to any person who does not present his wildlife conservation license at the time of application for such licenses.

History: En. Sec. 3, Ch. 172, L. 1969.

26-232. False statements in license application. It is unlawful to subscribe to any false statement in an application for a wildlife conservation license.

History: En. Sec. 4, Ch. 172, L. 1969; amd. Sec. 31, Ch. 9, L. 1977.

Amendments

The 1977 amendment rewrote this section which read "Any person who shall

subscribe to any false statement in application for a wildlife conservation license or violate any other provision of this act shall be guilty of a misdemeanor, and, on conviction thereof, shall be punished as provided in section 26-324."

26-233. Disposition of fees. The fees from the wildlife conservation license shall be delivered to the state treasurer and deposited by him in the earmarked revenue fund to the credit of the department in accordance with the provisions of section 26-121.

History: En. Sec. 5, Ch. 172, L. 1969; amd. Sec. 13, Ch. 417, L. 1977.

Effective Date

Section 6 of Ch. 172, Laws 1969 read "This act is effective May 1, 1969."

26-234. Portions of fees used to purchase recreational facilities. One dollar of the fee for Class A resident fishing license; \$1 of the fee for Class B-4 nonresident 1-day fishing license, \$5 of the fee for the Class B-3 nonresident 6-day fishing license; and \$5 of the fee for the Class B nonresident fishing license shall be used for the purchase, operation, development, and maintenance of fishing accesses, stream, river, and lake frontages and the land deemed necessary to provide recreational use thereof. The amount of funds used for operation, development, and maintenance may not exceed 15% of the moneys set aside each year under this section. The funds raised under this section may not be used in lieu of any funds or sources of funds currently being used for acquisition or purchase of fishing accesses, stream, river, or lake frontages and the land deemed necessary to provide recreational use thereof, but serve in addition to those funds. The moneys used for operation, development, and maintenance may be used only for these purposes on lands acquired with funds under this section after April 30, 1974.

History: En. Sec. 3, Ch. 408, L. 1973; amd. Sec. 1, Ch. 82, L. 1977.

Title of Act

An act amending section 26-202.1 and section 26-202.6, R. C. M. 1947, relating to fees for resident and nonresident fishing licenses; providing an effective date.

Amendments

The 1977 amendment inserted "operation, development, and maintenance" near

the end of the first sentence; inserted the second sentence; substituted "may not be used in lieu of" for "are not to supplement" in the third sentence; added the fourth sentence; and made minor changes in punctuation and style.

Effective Date

Section 4 of Ch. 408, Laws 1973 read "This act shall be in effect for license year beginning April 30, 1974, and thereafter for subsequent license years."

**CHAPTER 3—RESTRICTIONS ON TAKING FISH AND GAME—
OPEN AND CLOSED SEASONS**

Section	
26-301.	Restrictions on manner of taking and possessing fish and game and powers of department relating thereto.
26-301.1.	Wild buffalo protected.
26-302.	Big game hunters to wear colored garments.
26-303.	Penalty.
26-303.5.	Use of dogs for hunting mountain lion and bobcat.
26-306.	Fish pond license for artificial lake or pond.
26-307.	Waste of fish or game—hunting or fishing during closed season—killing more than one game animal—exceptions.
26-307.2.	Policy as to grizzly bear.
26-307.3.	Regulatory powers of commission as to grizzly bear.
26-315.	Taking deer within boundaries of cities or towns unlawful.
26-317.	Unlawful to destroy evidence of sex.
26-319.	Unlawful to hunt during closed season on certain game birds—power of department to open season.
26-324.	Penalties.
26-330.	Federal fish-hatching operations.
26-331.	Sale of fish or spawn unlawful—exceptions.
26-332.	Restrictions on fishing methods.
26-333.	Record of seining licenses—refusal of license.
26-344.	Restrictions on use of fish as bait—unlawful introduction of fish or game.
26-345.	Fire danger—area closed to hunting and fishing—request by board of county commissioners.

26-301. Restrictions on manner of taking and possessing fish and game and powers of department relating thereto. (1) (a) It is unlawful for anyone to take, capture, shoot, kill, or attempt to take, capture, shoot, or kill any game animal or game bird from any self-propelled or drawn vehicle or on or from any public highway in the state of Montana or by the aid or with the use of any set gun, jacklight, or other artificial light, trap, snare, or salt lick; nor may any such set gun, jacklight, or other artificial light, trap, snare, salt lick, or other device to entrap or entice game animals or game birds be used, made, or set. Rifles may not be used to hunt or shoot upland game birds unless the use of rifles is permitted by the department. This does not prohibit the shooting of wild waterfowl from blinds over decoys with a shotgun only, not larger than a number 10 gauge, fired from the shoulder, nor may any game fish be caught, captured, or taken or attempted to be caught, captured, or taken by the aid or with the use of any gun or trap, nor may any such set gun, trap, or other device to entrap game fish be used, made, or set.

(b) It is unlawful to use any recorded or electrically amplified bird or animal calls or sounds or recorded or electrically amplified imitations of bird or animal calls or sounds to assist in the hunting, taking, killing, or capturing of wildlife, except predatory animals and those birds not protected by state or federal law.

(2) (a) No game birds or game or fur-bearing animals may be killed, taken, or shot at from any aircraft including helicopters; nor may any aircraft or helicopter be used for the purpose of concentrating, pursuing, driving, rallying, or stirring up any game or migratory birds or game or fur-bearing animals; nor may any powerboat, sailboat, or any boat under sail or any floating device towed by a powerboat, sailboat, or any boat under sail be used for the purpose of killing, capturing, taking, pursuing, concentrating, driving, or stirring up any upland game birds or game or fur-bearing animals.

(b) It is unlawful for any person airborne in any aircraft, including a helicopter, to spot or locate any game or fur-bearing animals and communicate the location thereof to any person on the ground by means of any air-to-ground communication signal or device whatsoever as an aid to hunting or pursuing wildlife.

(c) Within the boundaries of a national forest, except as permitted by the department, it is unlawful to use aircraft, including helicopters, for hunting purposes, except when persons or cargo are loaded and unloaded at federal aviation agency approved airports, aircraft landing fields, or heliports which have been established on private property or which have been established by any federal, state, county, or municipal governmental body. Hunting purposes include the transportation of hunters or wildlife, and hunting equipment and supplies. The provisions of this subsection do not apply during emergency situations or when search and rescue operations are being conducted or for predator control as permitted by the department of livestock.

(3) No person may take into a field or forest or have in his possession while out hunting any device or mechanism devised to silence, muffle, or minimize the report of any firearms, whether such device or mechanism be operated from or attached to any firearm.

(4) No person may use a shotgun to hunt, kill, or shoot deer except with loads as specified by the department.

(5) (a) No person may chase with dogs any of the game or fur-bearing animals as defined by the fish and game laws of this state; however, livestock owners or employees of the department or the federal fish and wildlife service may use dogs in pursuit of stock-killing bears, stock-killing mountain lions, and stock-killing bobcats. Other means of taking stock-killing bears, stock-killing mountain lions, and stock-killing bobcats may be used, except the use of the deadfall. Traps used in capturing bears shall be inspected twice each day with the inspections 12 hours apart. A person may take game birds during the appropriate open season with the aid of a dog or dogs. Any person or association organized for the protection of game may run field trials at any time upon obtaining written permission from the director.

(b) Any peace officer, game warden, or other person authorized to enforce the Montana fish and game laws who witnesses any dog attacking or killing hooved game animals may destroy that dog without criminal or civil liability.

(6) The department shall have the power to designate certain waters where setlines may be used to fish for certain species of game or nongame fish, and the department may designate the number of hooks and lines and the length of line or lines which may be used as setlines.

(7) Game fish shall be taken only by angling, that is by hook and single line in hand or single rod in hand or within immediate control. This does not prevent, however:

(a) the snagging of paddlefish, coho (silver salmon), and kokanee (sockeye salmon) when the department declares an open season when

paddlefish, coho (silver salmon), and kokanee (sockeye salmon) may be taken by snagging;

(b) the taking of paddlefish with long bow and arrow when the department declares an open season when paddlefish may be taken by long bow and arrow;

(c) the taking of walleyed pike, sauger, northern pike, and nongame fish with spear or gig when the department declares an open season for taking walleyed pike, sauger, northern pike, and nongame fish with spear or gig;

(d) the use of landing net or gaff to land a game fish after the same has been hooked by angling as above specified; or

(e) the taking of minnows other than game fish variety by the use or aid of a net not to exceed 12 feet in length and 4 feet in width in such waters as may be designated by the department.

(8) No person, while hunting game animals or game birds, may use a motor-driven vehicle other than on an established road or trail unless he has reduced a big game animal to possession and cannot easily retrieve the big game animal. In that case a motor-driven vehicle may be used to retrieve the big game animal, except in areas where more restrictive regulations apply or where the landowner has not granted such permission. After the retrieval, the motor-driven vehicle is to be returned to an established road or trail by the shortest possible route. For purposes of safety and allowing normal travel, a motor-driven vehicle may be parked on the roadside or directly adjacent to a road or trail. No person, while hunting game animals or game birds, may drive or attempt to drive, run or attempt to run, molest or attempt to molest, flush or attempt to flush, or harass or attempt to harass any game animal or game bird with the use or aid of any motor-driven vehicle. No person, while hunting game animals or game birds, may drive through any retired cropland, brush area, slough area, timber area, open prairie, or unharvested or harvested cropland, except upon an established road or trail unless written permission has been given by the landowner and is in possession of the hunter. The restrictions in this subsection on motor-driven vehicle use off an established road or trail apply only to hunting on state or private land, not to hunting on federal land unless the federal agency specifically requests or approves state enforcement.

(9) It is unlawful for a person to use a self-propelled vehicle to intentionally concentrate, drive, rally, stir up, or harass wildlife except predators of this state, providing that this subsection does not apply to landowners and their authorized agents engaged in the immediate protection of that landowner's property.

(10) The provisions of this section relating to methods of herding, driving, capturing, taking, locating, or concentrating of fish, game animals, game birds, or fur-bearing animals do not apply to the department or to any employee thereof while acting within the scope and course of the powers and duties of the department.

History: En. Sec. 14, Ch. 238, L. 1921; 5, Ch. 77, L. 1923; amd. Sec. 15, Ch. 192, re-en. Sec. 3694, R. C. M. 1921; amd. Sec. L. 1925; amd. Sec. 12, Ch. 59, L. 1927;

amd. Sec. 1, Ch. 162, L. 1931; amd. Sec. 1, Ch. 159, L. 1941; amd. Sec. 5, Ch. 224, L. 1947; amd. Sec. 1, Ch. 157, L. 1949; amd. Sec. 1, Ch. 126, L. 1951; amd. Sec. 1, Ch. 223, L. 1953; amd. Sec. 1, Ch. 193, L. 1955; amd. Sec. 1, Ch. 53, L. 1963; amd. Sec. 1, Ch. 34, L. 1967; amd. Sec. 1, Ch. Ch. 90, L. 1969; amd. Sec. 1, Ch. 201, L. 1969; amd. Sec. 1, Ch. 177, L. 1971; amd. Sec. 1, Ch. 124, L. 1973; amd. Sec. 1, Ch. 305, L. 1973; amd. Sec. 1, Ch. 108, L. 1975; amd. Sec. 1, Ch. 152, L. 1975; amd. Sec. 9, Ch. 9, L. 1977; amd. Sec. 1, Ch. 196, L. 1977; amd. Sec. 3, Ch. 235, L. 1977; amd. Sec. 1, Ch. 400, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 1, Ch. 485, L. 1977.

Compiler's Notes

This section was amended five times in 1977 by Chs. 9, 196, 235, 400, and 485. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by all amendments.

Amendments

The 1969 amendment by chapter 90 inserted provision in subsection (7) permitting the commission to declare open seasons for taking walleyed pike, sauger and northern pike with spear or gig.

The 1969 amendment by ch. 201 inserted a subsection (8) reading: "It shall be unlawful for anyone to use a self-propelled vehicle to intentionally concentrate, drive, rally, stir up or harass game animals, game birds or fur-bearing animals"; renumbered previous subsection (8) as (9); and made a minor change in punctuation.

The 1971 amendment inserted "and stock-killing mountain lions" in two places in subsection 5.

Chapter 124, Laws of 1973 added subsection (10).

Chapter 305, Laws of 1973, substituted the present subsection (8) for the subsection inserted by Ch. 201, Laws of 1969.

Chapter 108, Laws of 1975, inserted "except in areas where more restrictive regulations apply or where the landowner has

not granted such permission" in the first sentence of subsection (8); and added the last sentence to subsection (8).

Chapter 152, Laws of 1975, inserted "upland" before "game birds" and deleted a reference to "migratory waterfowl" near the end of subdivision (2)(a).

Chapter 9, Laws of 1977, deleted a former subsection (9) which read: "Whenever said fish and game commission shall have made any orders, rules or regulations for the carrying out of the powers granted to it under this act, the same shall take effect and be in force from and after the publication and posting of notice of said orders, rules and regulations as required by the fish and game laws"; deleted the last paragraph which read: "Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and shall be punishable as provided by law"; and made minor changes in phraseology, punctuation and style.

Chapter 196, Laws of 1977, designated former subsection (1) as subdivision (1)(a); and added subdivision (1)(b).

Chapter 235, Laws of 1977, inserted "and stock-killing bobcats" in two places near the middle of subsection (5); and made minor changes in punctuation and style.

Chapter 400, Laws of 1977, designated former subsection (5) as subdivision (5)(a); added subdivision (5)(b); and made minor changes in phraseology, punctuation and style.

Chapter 485, Laws of 1977, substituted "any aircraft including helicopters, nor shall any aircraft or helicopter" near the beginning of subdivision (2)(a) for "any aircraft, nor shall any aircraft"; rewrote subdivision (2)(b) as set out in the parent volume; added subdivision (2)(c); and inserted subsection (9).

Effective Date

Section 2 of Ch. 201, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 4, 1969.

26-301.1. Wild buffalo protected. It is unlawful to hunt, shoot, kill, capture or possess wild buffalo except as permitted by rules adopted by the department.

History: En. Sec. 4, Ch. 167, L. 1973; amd. Sec. 13, Ch. 417, L. 1977.

Title of Act

An act to amend sections 26-201, 26-

202.1 and 26-202.2, R. C. M. 1947, by eliminating bison or buffalo as a big game animal; providing for protection of wild buffalo; defining wild buffalo.

26-302. Big game hunters to wear colored garments. (1) It is unlawful for any person to hunt any of the big game animals in this state or to

accompany any hunter as an outfitter or guide under any of the provisions of the laws of this state without the person wearing as exterior garments above the waist a total of not less than 400 square inches of hunter orange material visible at all times while hunting.

(2) "Hunter orange" means a daylight fluorescent orange color.

(3) This section does not apply to any person hunting with a bow and arrow during the special archery season.

(4) The department shall make rules to implement this section.

History: En. Sec. 1, Ch. 74, L. 1937; amd. Sec. 1, Ch. 12, L. 1961; amd. Sec. 1, Ch. 305, L. 1971; amd. Sec. 1, Ch. 20, L. 1974; amd. Sec. 10, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977.

Amendments

The 1971 amendment designated the former section as subsection (1); inserted "or to accompany any hunter as an outfitter or guide" in subsection (1); substituted "on his person a total of not less than four hundred (400) square inches of hunter orange material" for "a cap or hat, shirt jacket, coat or sweater of a bright red, orange or yellow color" in subsection (1); added subsections (2) and (3); and made minor changes in style and phraseology.

The 1974 amendment substituted "above the waist" near the end of subdivision (1) for "on his person"; added "visible at all times while hunting" at the end of sub-

division (1); substituted "during the special archery season" at the end of subdivision (2) for "in an area which at the time is open to big game hunting with a bow and arrow only"; added subdivision (4); and made a minor change in punctuation.

The 1977 amendment designated the second sentence of subsection (2) as subsection (3); deleted a former subsection (3) which read "Failure of any person to comply with this section shall not be treated as evidence of contributory negligence in a civil action for injury to him or for his wrongful death"; substituted "rules" in subsection (4) for "regulations"; and made minor changes in style and phraseology.

Effective Date

Section 1(4) of Ch. 305, Laws 1971 read "This act shall become effective May 1, 1972."

26-303. Penalty. Any person convicted of a violation of any of the provisions of this act shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than ten dollars (\$10) or more than twenty dollars (\$20).

History: En. Sec. 2, Ch. 74, L. 1937; amd. Sec. 2, Ch. 20, L. 1974.

Amendments

The 1974 amendment substituted "ten

dollars (\$10.00) or more than twenty dollars (\$20.00)" at the end of the section for "two dollars and fifty cents (\$2.50) or more than five dollars (\$5.00)."

26-303.2. Repealed.

Repeal

Section 26-303.2 (Sec. 2, Ch. 229, L. 1965), prohibiting nonresident hunting of big game animals unless accompanied by

a licensed resident, is repealed by Sec. 16, Ch. 221, Laws 1971, effective May 1, 1972. For present law, see sec. 26-909.

26-303.4. Repealed.

Repeal

Section 26-303.4 (Sec. 4, Ch. 229, L. 1965), relating to big game hunting vio-

lations, was repealed by Sec. 54, Ch. 9, Laws 1977.

26-303.5. Use of dogs for hunting mountain lion and bobcat. The department shall have authority to allow and regulate the use of dogs for hunting mountain lion and bobcat.

History: En. Sec. 1, Ch. 184, L. 1971; amd. Sec. 4, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977.

Amendments

The 1977 amendment added "and bobcat" to the end of the section.

Title of Act

An act to allow and regulate the use of dogs for hunting mountain lion.

26-306. (3695) Fish pond license for artificial lake or pond. (1) A person who owns or lawfully controls an artificial lake or pond may apply to the director for a fish pond license. The holder of a private fish pond license may stock his fish pond with fry procured from any lawful source. The department may designate the species of fish which may be released in the pond when there is a possibility of fish escaping from the pond into adjacent streams or lakes. The license holder may take fish from the lake or pond in any manner. Before a license holder may sell fish or eggs or fry from the lake or pond, he shall furnish a corporate surety bond to the state for \$500, conditioned to the effect that he will not sell fish or spawn from any of the public waters of this state and also conditioned to the effect that he will report to the director the quantity of fish, fish eggs, and spawn taken from the lake or pond. This report shall be made under oath annually during the month of January. A record of all transactions must be kept showing the species and numbers or pounds of fish sold, number and species of eggs sold, number and species of fry sold, name of person or persons to whom sold, and the date of transaction.

(2) "Artificial lake or pond" as used in this section does not include a natural pond or body of water created by natural means or any portion of the streambed or lakebed thereof. It includes only bodies of water created by artificial means or diversion of water which do not exceed 500 acres of surface area.

History: En. Sec. 14A, Ch. 238, L. 1921; re-en. Sec. 3695, R. C. M. 1921; amd. Sec. 6, Ch. 77, L. 1923; amd. Sec. 1, Ch. 43, L. 1929; amd. Sec. 1, Ch. 125, L. 1949; amd. Sec. 28, Ch. 511, L. 1973; amd. Sec. 32, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977.

and shall be punished as provided in section 26-324"; and made minor changes in phraseology and style.

Amendments

The 1973 amendment numbered the subsections; substituted "director" for "state fish and game warden" twice in subsection (1); and made minor changes in style, phraseology and punctuation.

The 1977 amendment deleted a subsection (3) which read "A person violating this section is guilty of a misdemeanor

Artificial Ponds

Fish and game commission abused discretion in failing to renew previously issued licenses for one pond created by diverting water from creek to channel dry for forty years and for another pond created by spring-fed creek arising and flowing into Yellowstone River entirely on licensee's property since ponds were entirely artificial and man-made within meaning of statute. *Paradise Rainbows v. Fish and Game Commission*, 148 M 412, 421 P 2d 717.

26-307. (3696) Waste of fish or game—hunting or fishing during closed season—killing more than one game animal—exceptions. (1) It shall be unlawful and a misdemeanor for any person responsible for the death of any game animal of this state, excepting grizzly, black and brown bear and mountain lion, to detach or remove from the carcass only the head, hide, antlers, tusks or teeth, or any or all of aforesaid parts, or to waste any part of any game animal, game bird, or game fish suitable for food, or to

abandon the carcass of any game animal in the field, except black and brown bear and mountain lion, which need have removed and taken from the carcass only the head or the hide of such bear or mountain lion, and except grizzly bear, which need have removed and taken from the carcass only the head and hide and such other parts as the department may demand for scientific purposes. All parts of grizzly bear demanded by the department for scientific purposes must be delivered to an officer or employee of the department for inspection as soon as possible after removal and the department shall return to the licensee any bone structure and skull within one year upon written request. The hide shall be returned immediately.

(2) It shall be unlawful and a misdemeanor for any person to kill more than one game animal of any one species, in any one license year, unless the killing of more than one game animal of such species has been authorized by regulations of the department.

(3) * * * [Same as parent volume.]

History: En. Sec. 15, Ch. 238, L. 1921; re-en. Sec. 3696, R. C. M. 1921; amd. Sec. 7, Ch. 77, L. 1923; amd. Sec. 16, Ch. 192, L. 1925; amd. Sec. 13, Ch. 59, L. 1927; amd. Sec. 1, Ch. 152, L. 1931; amd. Sec. 1, Ch. 160, L. 1941; amd. Sec. 1, Ch. 158, L. 1955; amd. Sec. 1, Ch. 40, L. 1961; amd. Sec. 3, Ch. 134, L. 1969; amd. Sec. 1, Ch. 162, L. 1973; amd. Sec. 13, Ch. 417, L. 1977.

Amendments

The 1969 amendment added the provisions in subsection (1) relating to delivery of grizzly bear parts to the commission.

The 1973 amendment inserted references to mountain lions in three places in the first sentence of subsection (1).

Effective Date

Section 4 of Ch. 134, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 27, 1969.

26-307.1. Repealed.

Repeal

Section 26-307.1 (Sec. 2, Ch. 158, L. 1955; Sec. 13, Ch. 417, L. 1977), relating

Consent by Government Agent

The United States government, through its authorized undercover agents, having given its consent to the acts of the defendant of killing game illegally, the conduct of defendant was not criminal. *United States v. Sanford*, 503 F 2d 291.

Seasons on Indian Reservation

Conviction of non-Indian for killing two bull elk on Crow Indian Reservation during season closed by state fish and game laws was not in conflict with act of Congress providing a penalty for trespass to possessory rights of reservation Indians nor in conflict with Montana Enabling Act providing that Indian lands shall remain under the absolute jurisdiction and control of Congress of United States. *State ex rel. Nepstad v. Danielson*, 149 M 438, 427 P 2d 689.

to penalties for violation of hunting and fishing laws, was repealed by Sec. 54, Ch. 9, Laws 1977.

26-307.2. Policy as to grizzly bear. It is hereby declared the policy of the state of Montana to protect, conserve and manage grizzly bear as a rare species of Montana wildlife.

History: En. Sec. 1, Ch. 134, L. 1969.

Title of Act

An act to protect, conserve and manage grizzly bear as a rare species of Montana wildlife, to provide the state fish and game commission with authority to promulgate such regulations as may

be necessary for the protection, conservation and management of grizzly bear, and to amend section 26-307, R. C. M. 1947, by providing that such parts of grizzly bear as the commission shall demand must be removed and delivered to an officer or employee of the commission.

26-307.3. Regulatory powers of commission as to grizzly bear. The state fish and game commission shall have authority to provide open and closed seasons; means of taking; shooting hours; tagging requirements for carcasses, skulls and hides; possession limits; and requirements for transportation, exportation and importation of grizzly bear.

History: En. Sec. 2, Ch. 134, L. 1969.

26-315. (3697.1) Taking deer within boundaries of cities or towns unlawful. It is unlawful to shoot, kill, take, or cause to be shot, killed, taken or captured or to attempt to shoot, kill, take or capture any deer within the boundaries of any incorporated or unincorporated city or town of this state.

History: En. Sec. 2, Ch. 123, L. 1933; amd. Sec. 2, Ch. 465, L. 1977.

Amendments

The 1977 amendment deleted a former

second paragraph, providing penalties for violation of the act; and made minor changes in phraseology and punctuation. For prior version, see parent volume.

26-317. (3698) Unlawful to destroy evidence of sex. It is unlawful for any person killing a big game animal within this state to destroy evidence of the sex of the big game animal so killed so as to make the determination of the sex thereof uncertain.

History: En. Sec. 16a, Ch. 238, L. 1921; amd. Sec. 3698, R. C. M. 1921; amd. Sec. 18, Ch. 192, L. 1925; amd. Sec. 7, Ch. 224, L. 1947; amd. Sec. 1, Ch. 99, L. 1949; amd. Sec. 33, Ch. 9, L. 1977.

Amendments

The 1977 amendment inserted "It is unlawful for" at the beginning of the section; deleted "shall be guilty of a misdemeanor and upon conviction thereof, shall be punished as provided in section 26-324" at the end of the section; and made minor changes in phraseology.

26-319. (3700) Unlawful to hunt during closed season on certain game birds—power of department to open season. It is unlawful for any person to hunt, shoot, kill, capture, possess, or cause to be hunted, killed, or captured or attempt to shoot, kill, or capture any quail, Chinese or Mongolian pheasants, commonly called ringneck pheasants, Hungarian partridge, chukar partridge, sage grouse, sharptailed grouse, blue grouse, fool hen, prairie chicken, ruffed grouse, ptarmigan, or wild turkey until such time as the department shall provide an open season on any quail, Chinese or Mongolian pheasants, commonly called ringneck pheasant, Hungarian partridge, chukar partridge, sage grouse, sharptailed grouse, blue grouse, fool hen, prairie chicken, ruffed grouse, ptarmigan, or wild turkey.

History: En. Sec. 18, Ch. 238, L. 1921; re-en. Sec. 3700, R. C. M. 1921; amd. Sec. 10, Ch. 77, L. 1923; amd. Sec. 20, Ch. 192, L. 1925; amd. Sec. 14, Ch. 59, L. 1927; amd. Sec. 1, Ch. 134, L. 1951; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 3, Ch. 465, L. 1977.

Amendments

The 1977 amendment inserted "possess" near the beginning of the section after "hunt, shoot, kill, capture"; deleted the former second paragraph, providing a penalty for violating the section; and made minor changes in phraseology and punctuation. For prior version, see parent volume.

26-320. (3703) Closed season and bag limits on migratory game birds.**Compiler's Notes**

Section 13, Ch. 417, Laws 1977, substituted a reference to the department of fish

and game in this section for "state fish and game commission."

26-324. (3706) Penalties. (1) A person violating any provision of Title 26, any other state law pertaining to fish and game, or the orders or rules of the commission or department is, unless a different punishment is expressly provided by law for the violation, guilty of a misdemeanor and shall be fined not less than \$50 or more than \$500, imprisoned in the county jail for not more than 6 months, or both. In addition, the person shall be subject to forfeiture of his license and privilege to hunt, fish, or trap within this state for a period of not less than 24 months from the date of conviction.

(2) (a) A person convicted of unlawfully taking, killing, possessing, transporting, or wasting of a bighorn sheep, moose, wild bison, caribou, mountain goat, or grizzly bear or any part of these animals shall be fined not less than \$500 or more than \$1,000, imprisoned in the county jail for not more than 6 months, or both. In addition, that person shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for not less than 30 months from the date of conviction.

(b) A person convicted of unlawfully taking, killing, possessing, or transporting a deer, antelope, elk, mountain lion, or black bear or any part of these animals, or wasting a deer, antelope, or elk, shall be fined not less than \$300 or more than \$1,000, imprisoned in the county jail for not more than 6 months, or both. In addition, that person shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for not less than 24 months from the date of conviction.

(c) A person convicted of unlawfully attempting to trap, take, shoot, or kill a game animal shall be fined not less than \$200 or more than \$600, imprisoned in the county jail for not more than 60 days, or both.

(d) A person convicted of unlawfully taking, killing, possessing, transporting, shipping, labeling, packaging, or wasting or unlawfully attempting to take, kill, or possess any game bird, wild turkey, fish, or fur-bearing animal or any part of any such animal or fish or of failure to tag a game animal or game bird as prescribed by law shall be fined not less than \$50 or more than \$200 or imprisoned in the county jail for not more than 30 days, or both.

(e) A person convicted of hunting, fishing or trapping while his license is forfeited or his privilege denied shall be imprisoned in the county jail for not less than 5 days or more than 6 months. In addition that person may be fined not less than \$500 or more than \$1,000.

(3) Notwithstanding the provisions of subsection (1), the penalties provided by this section shall be in addition to any penalties provided in 26-904, 26-906, 26-908, and 26-911 through 26-921 and 26-907.

History: En. Sec. 23, Ch. 238, L. 1921; 23, Ch. 192, L. 1925; amd. Sec. 9, Ch. 224, re-en. Sec. 3706, R. C. M. 1921; amd. Sec. L. 1947; amd. Sec. 1, Ch. 159, L. 1955;

amd. Sec. 29, Ch. 511, L. 1973; amd. Sec. 34, Ch. 9, L. 1977; amd. Secs. 13, 14, Ch. 417, L. 1977; amd. Sec. 1, Ch. 465, L. 1977.

Compiler's Notes

This section was amended three times in 1977 by Chs. 9, 417, and 465. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by all amendments.

Amendments

The 1973 amendment deleted "including the provisions of section 26-101 to 26-1306, and all acts amendatory thereof, or supplementary" following "state law pertaining to fish and game" in the first sentence; eliminated repetitious language in the 1955 amendment; and made minor changes in style, phraseology and punctuation.

Chapter 9, Laws of 1977, inserted the subsection (1) designation; substituted "any provision of Title 26, any other state law" near the beginning of the section for "any state law"; added a subsection (2) now designated (3); and made minor

changes in phraseology, punctuation and style.

Chapter 417, Laws of 1977, inserted "or department" near the middle of the first sentence; and made minor changes in punctuation and style.

Chapter 465, Laws of 1977, inserted the subsection (1) designation; substituted "any provision of Title 26, any other state law" near the beginning of the section for "any state law"; increased the minimum fine from \$25 to \$50 in the first sentence; substituted "be subject to forfeiture of his license and privilege to hunt, fish, or trap within this state for a period of not less than 24 months from the date of conviction" at the end of subsection (1) for "in the discretion of the court, forfeit his license and privilege to hunt, fish, or trap within this state for a period of sixteen (16) months from the date of conviction"; added subsection (2); and made minor changes in phraseology, punctuation and style.

Repealing Clause

Section 15 of Ch. 417, Laws 1977 read "Sections 26-106, 26-124, and 82A-2003, R. C. M. 1947, are repealed."

26-330. (3712) Federal fish-hatching operations. The government of the United States, the United States commissioner of fisheries, and its or his duly authorized agent or agents may conduct fish-hatching and all operations connected therewith (in any manner and at any time that may be considered necessary and proper by them) at any United States fish cultural station that may be established by the United States government in the state of Montana.

History: En. Sec. 1, Ch. 9, L. 1913; re-en. Sec. 3712, R. C. M. 1921; amd. Sec. 11, Ch. 9, L. 1977.

Amendments

The 1977 amendment deleted "hereafter" before "be established" near the end of the section; and made minor changes in punctuation and phraseology.

26-331. (3713) Sale of fish or spawn unlawful—exceptions. No person may, for speculative purposes, for market, or for sale, in any way, catch any of the fish which in this title are classified as "game fish" or remove or cause to be removed the eggs or spawn of any such fish. No person may sell or offer for sale any of the game fish of this state as defined in this title or the eggs or spawn therefrom. This section does not apply to fish caught in private ponds by the owners thereof or to the taking of fish by the state authorities for the purpose of obtaining eggs for propagation in state fish hatcheries or by any person who receives a permit from the department to take eggs for such purposes.

History: En. Sec. 21, Ch. 173, L. 1917; re-en. Sec. 3713, R. C. M. 1921; amd. Sec. 11, Ch. 224, L. 1947; amd. Sec. 35, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977.

Amendments

The 1977 amendment deleted a provi-

sion that persons performing the prohibited acts "shall be deemed guilty of a misdemeanor and shall be punishable as provided by section 26-324"; and made minor changes in phraseology. For prior version, see parent volume.

26-332. (3714) Restrictions on fishing methods. (1) It is unlawful for a person to take or catch fish in any of the waters of this state, except with hook and line held in hand or line and hook attached to rod or pole held in hand; to take or catch fish with hook baited with any poisonous substance or by means of the use of any poisonous substance, including fish berries; or to take or catch fish by means of the use of fishtraps, grabhooks, seines, nets, or other similar means for catching fish. The department may designate such waters within the state of Montana wherein, in the judgment of the members of the department, spears or gigs may be used for taking walleyed pike, sauger, northern pike, and nongame fish and traps, seines, nets, and rubber or spring-propelled spears, when employed by sportsmen swimming or submerged in the water, may be used for the taking of designated species of fish. The waters so designated may be closed at the discretion of the department. The taking of all fish by such means in the waters, when so designated, is to be done under such rules as the department may prescribe with reference thereto and under the supervision of the department. All such nongame fish so taken may be possessed and sold in such manner and under such restrictions as the department may direct. All fish, other than those herein designated, so taken under department rules, when prescribed by the department, shall be returned uninjured to the waters from which they were taken.

(2) The taking of black bass in Flathead Lake may be permitted by the department.

History: En. Sec. 22, Ch. 173, L. 1917; re-en. Sec. 3714, R. C. M. 1921; amd. Sec. 16, Ch. 77, L. 1923; amd. Sec. 25, Ch. 192, L. 1925; amd. Sec. 18, Ch. 59, L. 1927; amd. Sec. 1, Ch. 44, L. 1959; amd. Sec. 2, Ch. 90, L. 1969; amd. Sec. 1, Ch. 8, L. 1971; amd. Sec. 36, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977.

Amendments

The 1969 amendment inserted "spears or gigs * * * nongame fish, and" in the proviso and inserted "nongame" before "fish so taken" near the end of the section.

The 1971 amendment deleted "nongame"

after "may be used for the taking of designated species of" in the middle part of the proviso.

The 1977 amendment inserted the subsection designations; substituted "It is unlawful for a person" at the beginning of subsection (1) for "Every person"; deleted "shall be guilty of a misdemeanor and upon conviction thereof, shall be punished as provided for in section 26-324, and the amendments thereto" at the end of the first sentence of subsection (1); deleted "and regulations" after "rules" in the fourth sentence of subsection (1); and made minor changes in style, punctuation and phraseology.

26-333. (3715) Record of seining licenses—refusal of license. The director shall keep a record of all licenses issued by him for the use of a net for the taking of fish, showing the name of the applicant, the date of issue, the waters to be used in, and the date of revocation if the license is revoked. The director shall pay all fees received for those licenses into the state treasury to the credit of the fish and game moneys in the earmarked revenue fund. A license may not be issued to a person whose license has been revoked for cause.

History: En. Sec. 23, Ch. 173, L. 1917; re-en. Sec. 3715, R. C. M. 1921; amd. Sec. 30, Ch. 511, L. 1973.

Amendments

The 1973 amendment substituted "The

director shall" for "It shall be the duty of the state game warden to" at the beginning of the first sentence; divided the former first sentence into two sentences; substituted "fish and game moneys in the earmarked revenue fund"

at the end of the second sentence for "fish and game fund"; and made minor changes in style, phraseology and punctuation.

26-334, 26-335.

Compiler's Notes

Section 13, Ch. 417, Laws 1977, substituted references to the department of fish

and game in these sections for references to the fish and game commission.

26-339. (3718) Repealed.

Repeal

Section 26-339 (Sec. 28, Ch. 173, L. 1917; Sec. 12, Ch. 224, L. 1947; Sec. 1,

Ch. 86, L. 1955), relating to dumping refuse from sawmills into streams, was repealed by Sec. 20, Ch. 140, Laws 1977.

26-344. (3694.3) Restrictions on use of fish as bait—unlawful introduction of fish or game. (1) The department may prohibit the use of small fish as bait for catching fish in such waters as the department designates. It may promulgate such other rules as are necessary to insure an adequate supply of fish in such waters and may regulate fishing from boats or other floating devices and the use of fishing lures or baits in all waters of the state.

(2) It is unlawful for any person to transplant or introduce any fish or fish eggs into any body of water in the state, and it is unlawful for any person to transplant or introduce any species of game birds, game or fur-bearing animals, or nongame wildlife into the state of Montana without first having obtained authorization from the department.

History: Sec. 3694.3, R. C. M. 1935 as added Sec. 1, Ch. 100, L. 1949; amd. Sec. 1, Ch. 153, L. 1951; amd. Sec. 2, Ch. 113, L. 1975; amd. Sec. 37, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977.

Amendments

The 1975 amendment substituted "game birds, game and fur-bearing animals and nongame wildlife" in the second paragraph for "game birds, or game animals."

The 1977 amendment inserted the subsection designations; substituted "rules" in the second sentence of subsection (1) for "regulations"; deleted a final paragraph which read "Any person found guilty of a violation of the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof shall be punished as provided for in section 26-324"; and made minor changes in punctuation and phraseology.

26-345. Fire danger—area closed to hunting and fishing—request by board of county commissioners. (1) When the fire danger becomes so extreme that the governor upon the advice and recommendation of the department of natural resources and conservation closes an area to trespass because of fire danger, that area is automatically closed to hunting or fishing and remains closed so long as the fire closure remains in effect.

(2) A board of county commissioners may initiate a request for a closure by submitting the request to the department. However, the department may adopt reasonable rules specifying the fire prevention and suppression measures that must have been taken by the board before a request may be submitted and considered.

History: En. Sec. 1, Ch. 57, L. 1969; amd. Sec. 31, Ch. 511, L. 1973; amd. Sec. 1, Ch. 178, L. 1975.

Title of Act

An act allowing for the closure of the hunting or fishing season during periods of extreme fire danger.

Amendments

The 1973 amendment substituted "department of natural resources and conservation" for "Montana state forester" in subsection (1); and made minor changes in phraseology and style.

The 1975 amendment designated the first paragraph as subsection (1); and added subsection (2).

CHAPTER 4—BEAVER—TRAPPING—LICENSE—PROTECTION**Section**

26-402. Destruction of beaver and beaver dams for protection of public health.

26-401. (3722) Repealed.**Repeal**

Section 26-401 (Sec. 38, Ch. 173, L. 1917; Sec. 1, Ch. 197, L. 1919; Sec. 17, Ch. 77, L. 1923; Sec. 19, Ch. 59, L. 1927; Sec. 1, Ch. 167, L. 1935; Sec. 15, Ch.

224, L. 1947; Sec. 1, Ch. 153, L. 1953; Sec. 1, Ch. 24, L. 1957; Sec. 1, Ch. 35, L. 1967), relating to protection of beaver, was repealed by Sec. 1, Ch. 56, Laws 1969, effective September 1, 1969.

26-402. (3722A) Destruction of beaver and beaver dams for protection of public health. (1) When a complaint is made to the department of health and environmental sciences that beaver are obstructing the free flow of a stream flowing through a settled area and into which sewage of a town or city is dumped, and the obstruction endangers public health the department of health and environmental sciences shall immediately investigate the complaint. If it finds that the work of the beavers endangers public health, it shall report the facts to the department of fish and game.

The department shall immediately issue a permit, free of charge, to the landowner upon whose land the beaver dams are located for the removal of the beaver, the number of which shall be designated by the warden making the inspection. The landowner shall remove all beaver and beaver dams as provided by the permit, within ten (10) days after its issuance. If the landowner refuses to remove the beaver or the dams in the ten-day period, or if he does not desire to do so and so advises the department, then the department may remove the beaver by trapping or transplanting and remove their dam by blasting or other means.

(2) The department shall furnish all labor needed to blast out or otherwise remove the beaver dams. Necessary explosives shall be furnished by the county in which the beaver dams are located.

History: En. Sec. 1, Ch. 173, L. 1943; amd. Sec. 32, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977.

Amendments

The 1973 amendment numbered the subsections; substituted "department of health and environmental sciences" for "state board of health" twice in the first sentence of subsection (1); substituted

"department of fish and game" for "fish and game commission" at the end of the first paragraph in subsection (1); deleted "deputy game" before "warden" near the end of the first sentence of the second paragraph in subsection (1); inserted "and beaver dams" in the second sentence of the second paragraph of subsection (1); and made minor changes in style, phraseology and punctuation.

CHAPTER 5--PROTECTION OF CERTAIN WILD BIRDS--SALE OF CONFISCATED BIRDS AND ANIMALS

Section

- 26-501. Protection of wild birds and their nests and eggs.
- 26-501.1. Protection and conservation of raptors—falconry.
- 26-503. Possession of unlawfully killed animals and of unlawful fishing implements.
- 26-504. Use of snare lawful under certain conditions.
- 26-506. Sale of confiscated birds and animals.
- 26-507. Certificate of sale.
- 26-509. Record of confiscated property.
- 26-512. Failure to tag turkey.

26-501. (3723) Protection of wild birds and their nests and eggs. It is unlawful for a person to hunt, capture, kill, possess, purchase, offer or expose for sale, ship, or transport any wild bird, other than a game bird, or any part of the plumage, skin, or body of the bird, irrespective of whether the bird was captured or killed within the state, or to take or destroy the nest or eggs of a wild bird, except under a certificate, falconer's license, or permit issued by the director. This section does not apply to the hunting, trapping, or killing of house sparrows, crows, starlings, rock doves, black-birds, magpies, and other birds the department designates or to the taking or destruction of their nests and eggs.

History: En. Sec. 41, Ch. 173, L. 1917; re-en. Sec. 3723, R.C.M. 1921; amd. Sec. 18, Ch. 77, L. 1923; amd. Sec. 20, Ch. 59, L. 1927; amd. Sec. 16, Ch. 224, L. 1947; amd. Sec. 2, Ch. 309, L. 1971; amd. Sec. 33, Ch. 511, L. 1973; amd. Sec. 38, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977.

Amendments

The 1971 amendment inserted "falconer's license" in the first sentence; substituted "house sparrows" for "English sparrows" in the second sentence; inserted "starlings, rock doves" in the second sentence; and deleted "eagles, hawks, snow owls, great

gray owls, great horned owls, kingfishers, and jays" from the second sentence.

The 1973 amendment substituted "director" for "state fish and game warden" near the end of the first sentence; and made minor changes in style and phraseology.

The 1977 amendment inserted "It is unlawful" at the beginning of the first sentence; deleted "is guilty of a misdemeanor and shall be punished as provided by section 26-324" at the end of the first sentence; and made minor changes in punctuation and phraseology.

26-501.1. Protection and conservation of raptors—falconry. (1) "Raptors", when used in this section or 26-501, means all birds of the orders falconiformes and strigiformes, commonly called falcons, hawks, eagles, ospreys, and owls.

(2) A person may not at any time hunt, capture, kill, possess, purchase, offer or expose for sale, or transport a raptor except as provided in this section or 26-501.

(3) The department may adopt specific rules for the keeping of records and for the trapping, taking, possession, or training of raptors used in the practice of falconry and may authorize the issuance of licenses to persons for the practice of falconry. It is unlawful for any person to possess a raptor or to train a raptor in the practice of falconry without a license.

(4) The peregrine falcon (*Falco peregrinus*), bald eagle (*Haliaeetus leucocephalus*), golden eagle (*Aquila chrysaetos*), and osprey (*Pandion haliaetus*) may not be captured in this state for the sport of falconry.

(5) The fee for a falconry license is \$3 a year or any part of a year. A license expires April 30 each year.

(6) A license may not be issued to a person under the age of 12 years.

(7) Species of raptors which are native to North America may be brought into Montana for the purpose of falconry unless that action is specifically prohibited by this section or 26-501, the laws of other states, or the rules of the federal government. Those raptors may be possessed, subject to this section or 26-501. A person bringing a raptor into this state must be able to show proof of the area of origin.

(8) A licensee may not at any time possess more than three raptors, including those that have been imported.

(9) Licensees may take raptors as young or fledglings from nests (unless specifically prohibited by department rules) or by traps or nets which are humane in their operation and use. Not more than one young may be taken from one nest by a permittee or permittees, and at least one young must be left in the nest. The department may close an area of the state to the taking of raptors at any time or designate other raptors which may not be taken. This subsection does not permit the removal of raptors in any national or state refuge or park or in any area in which local laws may prohibit that activity. Trapping raptors is permitted only between September 1 and February 1.

(10) Raptors may not be used to intentionally flush or harass big game.

(11) Raptors may not be loosed intentionally at protected mammals and birds. Game bird limits and all seasons and other rules relating to game birds must be obeyed.

(12) A licensee may not transfer ownership or possession of a raptor taken or possessed under the provisions of this section without notifying the department within 10 days after the date of transfer.

(13) Licensees shall have in possession a valid falconer's license when engaged in the practice of falconry. In addition, falconers loosing raptors at game birds shall have in possession a valid resident or nonresident game bird license.

(14) Falconry licenses or permits are not transferable and may be revoked for due cause at any time by the department.

(15) A person may not sell or offer for sale Montana raptors in this state. A person may not transport raptors out of the state except by permit issued by the department.

(16) Nonresidents who are working, attending schools, or otherwise living temporarily in the state of Montana may obtain a Montana falconry license and bring raptors, legally acquired in other states or countries, into the state of Montana; such nonresidents shall be allowed to hunt with falcons in the state of Montana subject to all Montana laws and rules.

(17) Predatory hawks and owls destroying livestock or poultry may be killed at any time by the livestock or poultry owners. Eagles may be killed in compliance with federal law and regulation.

History: En. Sec. 3, Ch. 309, L. 1971;
amd. Sec. 34, Ch. 511, L. 1973; amd. Sec.
1, Ch. 34, L. 1974; amd. Sec. 39, Ch. 9, L.
1977; amd. Sec. 13, Ch. 417, L. 1977.

Amendments

The 1973 amendment deleted "or cause to be shipped or transported" following "or transport" in subsection (2); substi-

tuted "this section or section 26-501" for "provisions of this act" in subsection (16); and made minor changes in style and phraseology.

The 1974 amendment substituted "any person" for "a resident of this state" near the end of subdivision (3); substituted "(*Falco peregrinus*)" for "(*Falcon peregrinus*)" near the beginning of subdivision (4); deleted "or unprotected birds or mammals" after "game birds" near the end of subdivision (13); substituted "resident or nonresident game bird" at the end of subdivision (13) for "hunting"; and added the second paragraph of subdivision (15).

The 1977 amendment inserted "or 26-501" after "this section" in subsections (1), (2), and (7); substituted "rules" in subsections (7), (11), and (16) for "regulations"; designated the former second paragraph of subsection (15) as subsection (16); deleted former subsection (16) which read "A person who violates this section or section 26-501 is guilty of a misdemeanor and shall be prosecuted under section 26-324"; and made minor changes in phraseology, punctuation and style.

26-502. (3724) Repealed.

Repeal

Section 26-502 (Sec. 42, Ch. 173, L. 1917; Sec. 17, Ch. 224, L. 1947), relating

to destruction of eggs or nest of birds or wild fowl, was repealed by Sec. 54, Ch. 9, Laws 1977.

26-503. (3725) Possession of unlawfully killed animals and of unlawful fishing implements. (1) The possession of dead bodies or any part thereof of any of the game fish, game or nongame birds, or game or fur-bearing animals defined by the fish and game laws of the state of Montana is prima facie evidence that the person or persons in whose possession the same are found have killed, caught, or taken the same, and the possession of a fishing rod and line, spear, gig, or barbed fork on the banks or shores of a stream or lake is prima facie evidence that the person or persons in whose possession the same are found were using the same to fish.

(2) It is unlawful to possess, have, hold, purchase, keep in storage, or possess for any other purpose any game fish, game bird, nongame bird, game animal, fur-bearing animal, or parts thereof which were unlawfully killed, captured, or taken. No person may unlawfully use any fishing rod and line, fishing lines, spear, gig, or barbed fork.

History: En. Sec. 43, Ch. 173, L. 1917; re-en. Sec. 3725, R. C. M. 1921; amd. Sec. 26, Ch. 192, L. 1925; amd. Sec. 21, Ch. 59, L. 1927; amd. Sec. 1, Ch. 41, L. 1931; amd. Sec. 18, Ch. 224, L. 1947; amd. Sec. 40, Ch. 9, L. 1977.

Amendments

The 1977 amendment rewrote subsection

(2) to only make the specified acts unlawful and deleted a provision therein that persons performing the acts "shall be guilty of a misdemeanor and punished as provided by section 26-324"; and made minor changes in style, punctuation and phraseology. For prior version, see parent volume.

26-504. (3725.1) Use of snare lawful under certain conditions. (1) It shall be lawful to use a snare trap for the purpose of snaring any animal or bird under the following conditions:

(a) Each snare trap must be tagged with a numbered metal device identifying the owner's name, address, and telephone number.

(b) It is unlawful to set snare traps on private property without the landowner's consent.

(c) Snare traps shall be set in a manner and at a time so as not to unduly endanger livestock.

(d) A person who injures livestock in snare traps is liable for damages to the owner of the livestock.

(2) A person convicted of violating the provisions of this section is guilty of a misdemeanor.

(3) The commission may adopt rules to enforce this section.

History: En. Sec. 1, Ch. 23, L. 1933; amd. Sec. 1, Ch. 69, L. 1974; amd. Sec. 1, Ch. 149, L. 1977.

Amendments

The 1974 amendment substituted "lawful to use a snare trap" near the beginning of the section for "unlawful for any person to use, or attempt to use, any anchored snare trap"; and added "except

as prohibited by commission regulation" at the end of the section.

The 1977 amendment inserted the subsection (1) designation; substituted "under the following conditions" at the end of the introductory clause of subsection (1) for "except as prohibited by commission regulation"; added subdivisions (1) (a) through (1)(d); and added subsections (2) and (3).

26-506. (3726) Sale of confiscated birds and animals. All birds, animals, fish, heads, hides, teeth, or other parts of any animal seized by any officer or warden shall be sold, under the direction of the director or wardens, at a time, place, and manner so as to receive the highest price. The sale shall be at public auction to the highest and best bidder. The director or his wardens shall publish notice of the time and place of the sale, together with a description of the birds, fish, animals, or parts or portions of animals to be sold, in a newspaper of general circulation published in the county where the sale is to be held. The notice shall be published at least once, and the sale shall not be less than five (5) nor more than thirty (30) days after the last publication. If the property seized is perishable, it may be sold by those officers without publishing notice of the sale. The property may be sold upon that public notice, and under those terms and conditions which in the discretion of the officers seem conducive to securing full value.

History: En. Sec. 47, Ch. 173, L. 1917; re-en. Sec. 3726, R. C. M. 1921; amd. Sec. 35, Ch. 511, L. 1973.

Amendments

The 1973 amendment substituted ref-

erences to the director for references to the state game warden; substituted references to wardens for references to deputy game wardens; and made minor changes in style, phraseology and punctuation.

26-507. (3727) Certificate of sale. Upon the sale of property as provided in 26-506, the officer shall issue a certificate to the purchasing party, certifying that the purchaser has the legal right to be in possession of the property and that anyone so acquiring this property from the state is prohibited from reselling or using the same for any commercial purpose. During an auction only one carcass of either deer, moose, or elk may be purchased per person. At its discretion, the department may donate unsold carcasses to welfare departments, public institutions, or charitable institutions.

History: En. Sec. 48, Ch. 173, L. 1917; re-en. Sec. 3727, R. C. M. 1921; amd. Sec. 27, Ch. 192, L. 1925; amd. Sec. 1, Ch. 45, L. 1975; amd. Sec. 12, Ch. 9, L. 1977.

Amendments

The 1975 amendment substituted "is prohibited from reselling such property and from using the same for any commer-

cial purpose" for "shall have the right to deal therewith without further question with respect to violation of the law, anything herein to the contrary notwithstanding" at the end of the first sentence; and added the second and third sentences.

The 1977 amendment substituted "property as provided in 26-506" near the beginning of the first sentence for "such

property"; deleted "fish and game" before "department" in the last sentence; and made minor changes in punctuation and phraseology.

26-509. (3729) Record of confiscated property. The director and wardens shall keep a complete record of all property confiscated because of a violation of the game and fish laws, showing in detail a description of the property, the person from whom it was confiscated, the price received for it upon public sale, and the disposition of the money.

History: En. Sec. 50, Ch. 173, L. 1917; re-en. Sec. 3729, R. C. M. 1921; amd. Sec. 36, Ch. 511, L. 1973.

Amendments

The 1973 amendment substituted a reference to the director for a reference to the state game warden; substituted a ref-

erence to warden for a reference to deputy game warden; deleted the former second sentence which required the director to keep in his office a permanent record showing all property confiscated and its disposition; and made minor changes in style and phraseology.

26-510. Special wild turkey tags—fee.

Compiler's Notes

Section 13, Ch. 417, Laws 1977, substituted references to the department of fish

and game in this section for references to the state fish and game commission.

26-512. Failure to tag turkey. It is unlawful for any person who kills, captures, or possesses any wild turkey by authority of any turkey tag or permit to fail or neglect to attach his tag to the turkey or fail to validate his tag by filling out or punch marking the tag as required and fail to keep the tag attached while the same is possessed by him.

History: En. Sec. 3, Ch. 35, L. 1959; amd. Sec. 41, Ch. 9, L. 1977.

Amendments

The 1977 amendment rephrased the section to only make the specified acts unlawful; deleted a provision therein that

the person performing the specified acts "shall be guilty of a misdemeanor and punished as provided by section 26-324"; and made minor changes in punctuation and phraseology. For prior version, see parent volume.

CHAPTER 7—SHIPMENT OF ANIMALS FROM STATE

Section

- 26-701. Removal of animals or parts of animals from the state unlawful.
- 26-704. Labeling of packages.
- 26-705. Violation by carriers.
- 26-708. Commercial exportation of aquatic insects prohibited.

26-701. (3730) Removal of animals or parts of animals from the state unlawful. It is unlawful for any person or persons to possess or to ship or take out of the state any illegally taken game or nongame birds, fish, game animals, fur-bearing animals, the skins of fur-bearing animals, or any parts thereof, whether taken within or coming from without the state.

History: En. Sec. 51, Ch. 173, L. 1917; re-en. Sec. 3730, R. C. M. 1921; amd. Sec. 19, Ch. 77, L. 1923; amd. Sec. 22, Ch. 59, L. 1927; amd. Sec. 19, Ch. 224, L. 1947; amd. Sec. 1, Ch. 38, L. 1963; amd. Sec. 42, Ch. 9, L. 1977.

Amendments

The 1977 amendment deleted "and a misdemeanor, punishable as provided by section 26-324" after "unlawful"; and made minor changes in punctuation and phraseology.

26-704. (3733) Labeling of packages. All shippers of fish, game or nongame birds, game animals, fur-bearing animals, the skins of fur-bearing

animals or predatory animals, or parts thereof are required to label all packages offered for shipment by parcel post, common carrier, or otherwise. The label shall be securely attached to the address of the package and shall plainly indicate the names and addresses of the consignor and consignee and the complete contents of the package.

History: En. Sec. 54, Ch. 173, L. 1917; re-en. Sec. 3733, R. C. M. 1921; amd. Sec. 22, Ch. 77, L. 1923; amd. Sec. 28, Ch. 192, L. 1925; amd. Sec. 25, Ch. 59, L. 1927; amd. Sec. 20, Ch. 224, L. 1947; amd. Sec. 43, Ch. 9, L. 1977.

Amendments

The 1977 amendment deleted "All persons violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction, shall be punished in the manner provided by section 26-324" at the end of the section; and made minor changes in punctuation and phraseology.

26-705. (3734) Violation by carriers. No person or the agent or employee of any common carrier, association, stage, express, railway, or transportation company may transport or receive for transportation or carriage or sell or offer for sale any of the game animals, game or nongame birds, fish, fur-bearing animals, the skins of fur-bearing animals, or parts thereof, except as specifically provided for by 26-704. All game or nongame birds, fish, game animals, fur-bearing animals or parts thereof had in possession or which have been shipped or are being transported in violation of any of the provisions of this act shall be seized, confiscated, and disposed of as provided by law.

History: En. Sec. 55, Ch. 173, L. 1917; re-en. Sec. 3734, R. C. M. 1921; amd. Sec. 26, Ch. 59, L. 1927; amd. Sec. 21, Ch. 224, L. 1947; amd. Sec. 44, Ch. 9, L. 1977.

Amendments

The 1977 amendment substituted "26-

704" at the end of the first sentence for "this act"; deleted "Any person violating any of the provisions of this act shall be guilty of a misdemeanor and punished in the manner provided by section 26-324" at the end of the section; and made minor changes in punctuation and phraseology.

26-708. Commercial exportation of aquatic insects prohibited. It is unlawful for any person to ship or take out of the state any aquatic insects for speculative purposes, for market, or for sale. This section does not apply to aquatic insects caught in private ponds by the owners thereof.

History: En. Sec. 1, Ch. 13, L. 1965; amd. Sec. 45, Ch. 9, L. 1977.

Amendments

The 1977 amendment deleted "and a

misdemeanor, punished as provided by section 26-324" after "unlawful"; and made minor changes in punctuation and phraseology.

CHAPTER 8—MISCELLANEOUS PROHIBITIONS

- Section**
- 26-801. Possession of game by merchants or hotel or restaurant keepers.
 - 26-802. Evidence of lawful possession of game.
 - 26-804. Noncompliance with law.
 - 26-805. Definitions.
 - 26-809. Bag limit prizes for game or fish taken unlawful—exception.
 - 26-811. Contests based on size of game animals unlawful.
 - 26-812. Forfeiture of license or permit for littering.
 - 26-813. Placing of caged fish in public waters prohibited except as provided by regulation.
 - 26-814. Authority of department over placing of caged fish.

26-801. (3737) Possession of game by merchants or hotel or restaurant keepers. It is lawful for any merchant, hotelkeeper, or restaurant keeper to have in his possession, offer for sale, or sell game and game birds, provided the game or game birds are not killed in Montana.

History: En. Sec. 58, Ch. 173, L. 1917; re-en. Sec. 3737, R. C. M. 1921; amd. Sec. 13, Ch. 9, L. 1977.

Amendments

The 1977 amendment substituted "hotelkeeper" for "hotel"; and made minor changes in punctuation and phraseology.

26-802. (3738) Evidence of lawful possession of game. Each merchant, hotelkeeper, or restaurant keeper, having in his possession and offering for sale any game or game birds, shall produce upon demand, for the inspection of any game warden, deputy game warden, or sheriff, the receipt or record and shipping and transportation receipts required in 26-803 to be kept by him. A failure or refusal to produce the same upon demand, coupled with the possession and offering for sale of game or game birds, is prima facie evidence of the violation of 26-801 through 26-805 and 26-808.

History: En. Sec. 59, Ch. 173, L. 1917; re-en. Sec. 3738, R. C. M. 1921; amd. Sec. 14, Ch. 9, L. 1977.

Amendments

The 1977 amendment substituted "hotelkeeper" for "hotel"; substituted "in 26-803" near the middle of the section for "hereby"; and made minor changes in punctuation and phraseology.

26-804. (3740) Noncompliance with law. It is unlawful for any person to have in his possession and offer for sale or sell any game or game birds without having complied with the provisions of 26-803 relating to the keeping of a record and shipping and transportation receipts.

History: En. Sec. 61, Ch. 173, L. 1917; re-en. Sec. 3740, R. C. M. 1921; amd. Sec. 23, Ch. 224, L. 1947; amd. Sec. 46, Ch. 9, L. 1977.

Amendments

The 1977 amendment inserted "It is un-

lawful for" at the beginning of the section; substituted "26-803" for "this act"; deleted "shall be guilty of a misdemeanor and punished in the manner provided by section 26-324" at the end of the section; and made minor changes in phraseology and punctuation.

26-805. (3741) Definitions. The words "game" and "game birds" or "parts of the same", mean the game animals and game birds, the killing of which is restricted or forbidden by the laws of Montana. The words "merchant", "hotelkeeper", or "restaurant keeper" mean each manager, servant, agent, or employer of such person.

History: En. Sec. 62, Ch. 173, L. 1917; re-en. Sec. 3741, R. C. M. 1921; amd. Sec. 30, Ch. 192, L. 1925; amd. Sec. 15, Ch. 9, L. 1977.

Amendments

The 1977 amendment deleted "In the

construction of this act" at the beginning of the first sentence; substituted "'hotelkeeper' or 'restaurant keeper'" in the second sentence for "'hotel and restaurant keeper'"; and made minor changes in phraseology and punctuation.

26-809. (3744.1) Bag limit prizes for game or fish taken unlawful—exception. That it shall be unlawful for any person, firm, corporation, association or club to offer or give any prize, gift or anything of value in

connection with, or as a bag limit prize for, the taking, capturing, killing or in any manner acquiring any game, fish, fowl, fur-bearing animals, or any fish, bird or animal now, or that shall be hereafter, protected in any way by the fish and game laws of the state of Montana.

This act shall not be construed to prohibit the award of prizes for any one game bird, fish or fur-bearing animal on the basis of size, quality, or rarity.

History: En. Sec. 1, Ch. 82, L. 1935;
amd. Sec. 1, Ch. 48, L. 1974.

Amendments

The 1974 amendment deleted "animal" after "game bird" from the second paragraph.

26-811. Contests based on size of game animals unlawful. Except as provided in this section, it is unlawful for any person, as defined in 26-201, to conduct or sponsor in any manner a contest in which a prize is offered to a person who kills a game animal possessing the largest antlers or horns, carrying the greatest weight, having the longest body, or any similar contest based upon the size or weight of a game animal or part of a game animal. This section does not apply to recognition given by the nationally established and recognized Boone and Crockett trophy institute.

History: En. Sec. 1, Ch. 133, L. 1961;
amd. Sec. 47, Ch. 9, L. 1977.

Amendments

The 1977 amendment substituted "this section" at the beginning of the second

sentence for "this act"; deleted "A person who violates this section is guilty of a misdemeanor and is punishable according to the provisions of section 26-324" at the end of the section; and made a minor change in style.

26-812. Forfeiture of license or permit for littering. Any holder of a Montana resident or nonresident fishing or hunting license or camping permit convicted of littering campgrounds, public or private lands, streams, or lakes while hunting, fishing, or camping shall forfeit his license and privilege to hunt, fish, camp, or trap within Montana for a period of 1 year from the date of conviction.

History: En. Sec. 1, Ch. 43, L. 1971;
amd. Sec. 2, Ch. 480, L. 1973; amd. Sec. 4,
Ch. 465, L. 1977.

Title of Act

An act to provide that the hunting or fishing license or camping permit of any person convicted of littering public or private lands while hunting, fishing or camping shall be forfeited for ninety days.

Amendments

The 1973 amendment increased the period for forfeiture of license from ninety days to one year; and added the second sentence.

The 1977 amendment deleted a former second sentence reading "Any person who hunts, fishes, camps or traps in Montana while such license and privilege are suspended is guilty of a misdemeanor"; and made minor changes in punctuation and style.

26-813. Placing of caged fish in public waters prohibited except as provided by regulation. It shall be unlawful for any person, firm or corporation to place or cause to be placed caged live fish in any of the public waters of the state of Montana, except as provided by department regulation.

History: En. Sec. 1, Ch. 126, L. 1971;
amd. Sec. 13, Ch. 417, L. 1977.

Title of Act

An act to regulate the placing of caged

fish in public waters and provide the fish and game commission with authority to regulate.

26-814. Authority of department over placing of caged fish. The department shall have the authority to regulate the placing of caged fish in public waters to protect the recreational and aesthetic use of such water from pollution, excessive private use and the introduction of disease.

History: En. Sec. 2, Ch. 126, L. 1971;
amd. Sec. 13, Ch. 417, L. 1977.

CHAPTER 9—OUTFITTERS AND GUIDES—TAXIDERMISTS

Section

- 26-904. Who considered outfitter.
- 26-906. Outfitter and employees of outfitter equally responsible with others for violations of law—must report violations.
- 26-907. Taxidermist's license—fee—penalty for violations.
- 26-908. Definitions.
- 26-911. Powers and duties of department.
- 26-912. Outfitters' council.
- 26-913. Authorization for rules.
- 26-914. Requirement of license as outfitter or guide—services performed—standards.
- 26-915. Application.
- 26-916. Kinds of licenses.
- 26-917. Deposit of fees.
- 26-918. Grounds for suspension or revocation of license.
- 26-919. Procedure for revocation or suspension of license.
- 26-920. Appeal to district court.
- 26-921. Enforcement.

26-901, 26-902. (3745, 3746) Repealed.

Repeal

Sections 26-901 and 26-902 (Secs. 66, 67, Ch. 173, L. 1917; Sec. 17½, Ch. 77, L. 1923; Sec. 1, Ch. 103, L. 1941; Sec. 25, Ch. 224, L. 1947; Secs. 1, 2, Ch. 173, L. 1949; Secs. 1, 2, Ch. 184, L. 1951; Secs. 1, 5, Ch. 223, L. 1955), relating to outfitters, are repealed by Sec. 16, Ch. 221, Laws 1971, effective May 1, 1972.

26-904. (3748) Who considered outfitter. (1) For the purposes of 26-904, 26-906, 26-908, and 26-911 through 26-921, the word "outfitter" means any person, persons, company, or corporation who:

(a) engages in the business of outfitting for hunting or fishing parties, as the term is commonly understood;

(b) for consideration provides any saddle or pack animal or personal service for hunting or fishing parties or camping equipment, vehicles, or other conveyance, except boats, for any person to hunt, trap, capture, take, or kill any game;

(c) for consideration furnishes a boat or other floating craft and accompanies any person for the purpose of catching fish; or

(d) aids or assists any person in locating or pursuing any game animal.

(2) The providing of the above-mentioned services, property, or equipment shall be conclusively presumed to have been for consideration for the purposes of 26-904, 26-906, 26-908, and 26-911 through 26-921 if the same or any thereof are provided by any person, company, or corporation for

more than two parties or two other persons during any calendar year or on more than two occasions during any such calendar year.

History: En. Sec. 69, Ch. 173, L. 1917; re-en. Sec. 3748, R. C. M. 1921; amd. Sec. 4, Ch. 173, L. 1949; amd. Sec. 3, Ch. 184, L. 1951; amd. Sec. 2, Ch. 223, L. 1955; amd. Sec. 1, Ch. 541, L. 1975; amd. Sec. 16, Ch. 9, L. 1977.

The 1977 amendment inserted the subsection and subdivision designations; substituted "26-904, 26-906, 26-908, and 26-911 through 26-921" in subsections (1) and (2) for "this act"; and made minor changes in style, punctuation and phraseology.

Amendments

The 1975 amendment added the second sentence.

26-905. (3749) Repealed.

Repeal

Section 26-905 (Sec. 70, Ch. 173, L. 1917; Sec. 5, Ch. 173, L. 1949; Sec. 4, Ch. 184, L. 1951; Sec. 4, Ch. 223, L. 1955),

relating to the records required of an outfitter, was repealed by Sec. 58, Ch. 511, Laws 1973.

26-906. (3750) Outfitter and employees of outfitter equally responsible with others for violations of law—must report violations. Any person accompanying a hunting or fishing party as an outfitter or agent or employee of such outfitter shall be equally responsible with any person or party employing him as an outfitter for any violation of the law; any such outfitter or employee of such outfitter, who shall willfully fail to or refuse to report any violation of the law, shall be liable to the penalties as herein provided. If any professional guide commits any violation of the laws, or applicable regulations, relating to fish and game, outfitting or guiding with actual or implied knowledge of an outfitter then employing such guide, the outfitter is legally responsible for such violation for all purposes under the laws or regulations if the outfitter fails to report any such violation to proper authority.

No person may hire or retain any outfitter or professional guide unless the outfitter or professional guide is currently licensed in accordance with the laws of the state of Montana.

History: En. Sec. 71, Ch. 173, L. 1917; re-en. Sec. 3750, R. C. M. 1921; amd. Sec. 6, Ch. 173, L. 1949; amd. Sec. 5, Ch. 184, L. 1951; amd. Sec. 3, Ch. 223, L. 1955; amd. Sec. 2, Ch. 541, L. 1975.

Amendments

The 1975 amendment added the second sentence to the first paragraph; and added the second paragraph.

26-907. (3751) Taxidermist's license—fee—penalty for violations. A person who engages in conducting any taxidermy business, as the term is generally understood, or any person who conducts a business for the purpose of mounting, preserving, or preparing any of the dead bodies of any wildlife or any part thereof must first obtain from the director a taxidermist's license and pay an annual license fee of \$15 therefor. Such person shall keep a written record of all the articles of wildlife in his possession or control, the kind and number of each, by whom owned, and the residence of owner, all the articles of wildlife shipped and to whom and where shipped. The above record shall be kept for as long as such articles remain in the possession of the licensee but, in any event, at least 5 years. These records shall be open to inspection by any state game warden at any reasonable time.

In all cases of conviction of violation of this section, the license of the person convicted may be revoked by the court.

History: En. Sec. 72, Ch. 173, L. 1917; re-en. Sec. 3751, R. C. M. 1921; amd. Sec. 24, Ch. 77, L. 1923; amd. Sec. 26, Ch. 224, L. 1947; amd. Sec. 1, Ch. 12, L. 1959; amd. Sec. 1, Ch. 10, L. 1974; amd. Sec. 48, Ch. 9, L. 1977; amd. Sec. 1, Ch. 129, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 9 and once by Ch. 129. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

The 1974 amendment deleted "license number" in the second sentence after "by whom owned."

Chapter 9, Laws of 1977, substituted "taxidermy" for "taxidermist" near the beginning of the first sentence; deleted the fourth sentence, which made violations a misdemeanor, punishable as pro-

vided by section 26-324; substituted "section" for "act" near the end of the section; and made minor changes in phraseology and style.

Chapter 129, Laws of 1977, substituted "wildlife" near the middle of the first sentence for "birds, or animals"; deleted "mentioned in the game laws of this state" after "any part thereof" near the middle of the first sentence; substituted "wildlife in his possession or control" near the middle of the second sentence for "game"; substituted "wildlife shipped" for "game shipped" near the middle of the second sentence; substituted "as long as such articles remain in the possession of the licensee but, in any event, at least 5 years" near the beginning of the third sentence for "at least a period of one (1) year and"; substituted "section" for "act" in the last sentence; substituted "may be revoked by the court" at the end of the section for "shall be revoked"; and made minor changes in phraseology and style.

26-908. Definitions. As used in 26-904, 26-906, 26-908, and 26-911 through 26-921, unless the context requires otherwise, the following definitions apply:

- (1) "Outfitter" has the definition given it in 26-904;
- (2) "Professional guide" means a person who is an employee of an outfitter and who furnishes only personal guiding services in assisting a person to hunt or take game animals or fish and who does not furnish any facilities, transportation, or equipment;
- (3) "Resident guide" means a resident who guides resident or non-resident friends for the purpose of hunting game animals without compensation;
- (4) "Advisory council" means the Montana outfitters' council provided for in 82A-2005;
- (5) "Resident" means a person who qualifies for a resident Montana hunting or fishing license under 26-202.3;
- (6) "Nonresident" means a person other than a resident;
- (7) "License year" means that period commencing May 1 and ending April 30 of the next year.

History: En. Sec. 1, Ch. 221, L. 1971; amd. Sec. 37, Ch. 511, L. 1973; amd. Sec. 17, Ch. 9, L. 1977.

Title of Act

An act providing for the licensing and regulation of outfitting and guiding of hunting and fishing parties in the state of Montana; providing for the regulation of nonresident hunters; the protection of private property; the protection of en-

vironmental resources; and to repeal section 26-901, 26-902 and 26-303.2, R.C.M., 1947, and providing an effective date.

Amendments

The 1973 amendment substituted "requires" for "indicates" in the preliminary clause; deleted "protected" before "game animals or fish" in subsection (2); inserted "provided for in section 82A-2005" at the end of subsection (4); deleted sub-

section (8) which defined "Supervisor of outfitting"; and made minor changes in style and phraseology.

The 1977 amendment substituted "26-904, 26-906, 26-908, and 26-911 through 26-

921" near the beginning of the section for "this act"; inserted "the following definitions apply" before subdivision (1); and made minor changes in style and punctuation.

26-909. Repealed.

Repeal

Section 26-909 (Sec. 2, Ch. 221, L. 1971; Sec. 13, Ch. 417, L. 1977), relating to

guides for nonresident hunting, was repealed by Sec. 54, Ch. 9, Laws 1977.

26-910. Repealed.

Repeal

Section 26-910 (Sec. 3, Ch. 221, L. 1971), relating to the appointment of a super-

visor of outfitting, was repealed by Sec. 58, Ch. 511, Laws 1973. For new law, see sec. 26-911 (5).

26-911. Powers and duties of department. The department shall:

(1) Prepare and publish an information pamphlet which contains the names and addresses of all licensed outfitters. This pamphlet shall be available for free distribution as early as possible during each calendar year, but not later than the second Friday in March. The pamphlet shall contain the names and addresses of only those outfitters who have a valid license for the current year. The costs of publication of the pamphlet shall be paid from the earmarked revenue fund, fish and game account;

(2) Co-operate with the federal government through its appropriate agencies or instrumentalities in matters of mutual concern regarding the business of outfitting and guiding in Montana;

(3) Establish a minimum of two (2) meetings annually with the advisory council;

(4) Consult with the advisory council to develop policy concerning the administration of outfitting and to transmit the council recommendations to the department;

(5) Designate a warden or ex officio warden with no conflict of interest whose primary duties are to administer outfitting and guiding laws and regulations.

History: En. Sec. 4, Ch. 221, L. 1971; amd. Sec. 38, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977.

Amendments

The 1973 amendment substituted references to the department for references to the supervisor of outfitting; deleted former subsection (1), which imposed the

duty of carrying out and causing enforcement of all provisions of the act; renumbered subsections (2), (3), (4) and (5) as (1), (2), (3) and (4); substituted "earmarked revenue fund, fish and game account" for "state fish and game fund" at the end of subsection (1); added a new subsection (5); and made minor changes in phraseology.

26-912. Outfitters' council. The council shall have the authority and duty to make recommendations to the department and the director as to:

(1) outfitter standards;

(2) rules of procedures and rules to effectuate 26-904, 26-906, 26-908, and 26-911 through 26-921, including but not limited to rules prescribing all requisite qualifications for license. These qualifications shall include train-

ing, experience, knowledge of rules of governmental bodies pertaining to outfitting, and condition and type of gear and equipment;

(3) hearings and proceedings to suspend or revoke licenses of outfitters and guides and to recommend suspension or revocation of licenses for due cause;

(4) any reasonable rules, not in conflict with 26-904, 26-906, 26-908, and 26-911 through 26-921, necessary for safeguarding the health, safety, and welfare of those persons utilizing the services of outfitters and for the protection of landowners and the general public.

History: En. Sec. 5, Ch. 221, L. 1971; amd. Sec. 39, Ch. 511, L. 1973; amd. Sec. 18, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977.

Amendments

The 1973 amendment deleted subsection (1), which established the advisory council; made the preliminary clause of subsection (2) the preliminary clause to the entire section; designated former subdivisions (2) (a), (2) (b), (2) (c) and (2) (d) as subdivisions (1), (2), (3) and (4); and made minor changes in style, phraseology and punctuation.

The 1977 amendment substituted "rules" before "to effectuate" in subdivision (2) for "regulations"; substituted "26-904, 26-906, 26-908, and 26-911 through 26-921" in subsections (2) and (4) for "this act"; deleted "and regulations" after "rules" in the second sentence of subsection (2) and in subsection (4); and made minor changes in style.

Cross-References

Outfitters' council, see sec. 82A-2005.

26-913. Authorization for rules. The department may adopt, promulgate, and enforce rules recommended by the advisory council as provided in 26-912 and all other rules it may consider proper for the administration and enforcement of the provisions of 26-904, 26-906, 26-908, and 26-911 through 26-921 and the regulation of outfitting and guiding to provide for the services to the public.

History: En. Sec. 6, Ch. 221, L. 1971; amd. Sec. 19, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977.

Amendments

The 1977 amendment deleted "and reg-

ulations" after "rules" in two places; substituted "26-904, 26-906, 26-908, and 26-911 through 26-921" for "this act"; and made minor changes in style, punctuation and phraseology.

26-914. Requirement of license as outfitter or guide—services performed—standards. (1) No person may act as an outfitter, professional guide, or resident guide or advertise as an outfitter without first securing a license in accordance with the provisions of 26-904, 26-906, 26-908, and 26-911 through 26-921.

(2) Whenever an outfitter is engaged by any person or a resident guide takes out nonresident friends, the outfitter or resident guide shall keep and submit records as required by the department.

(3) Outfitters and their employees may not shoot, kill, or take big game animals for or in competition with those employing them while acting under employment as an outfitter.

(4) Outfitters and resident guides utilizing lands under the control of the United States government shall obtain the proper permits required by the government office responsible for the area in which the outfitter or

resident guide intends to operate and shall comply with environmental protection standards established for these lands.

(5) An outfitter may not willfully and substantially misrepresent his facilities, prices, equipment, services, or hunting.

(6) Outfitters and their employees shall take every reasonable measure to provide their advertised services to their clients.

History: En. Sec. 7, Ch. 221, L. 1971; amd. Sec. 20, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977.

Amendments

The 1977 amendment substituted "26-904, 26-906, 26-908, and 26-911 through 26-921" in subsection (1) for "this act"; and made minor changes in punctuation and phraseology.

26-915. Application. (1) Each applicant for an outfitter's or professional guide's license shall make application for license upon a form to be prescribed and furnished by the department which shall include:

- (a) the applicant's full name, address, and telephone number;
- (b) the address of his principal place of business in the state of Montana;
- (c) the amount and kind of property and equipment owned and used in the outfitting business of the applicant, if an outfitter's license application is involved;
- (d) the experience of the applicant, including years of experience as an outfitter or guide, knowledge of areas in which he has operated and intends to operate, and ability to cope with weather conditions and terrain;
- (e) a signed statement of the licensed outfitter by whom the professional guide is to be employed that the guide is in fact to be employed by such outfitter and stating that the outfitter recommends the applicant for his qualifications;
- (f) a statement by a warden to the director that the equipment listed on the application has been inspected by the warden and that the same is in fact owned or leased by the applicant, is in good operating condition, and is sufficient and satisfactory for the services advertised or contemplated to be performed by such applicant;
- (g) a statement of the maximum number of guests to be taken at any one time;
- (h) the written approval of the rangers in whose district he will establish hunting camps, if the applicant intends to outfit on a national forest.

(2) Applications for outfitter's license shall be in the name of an individual person only. Applications involving corporations or partnerships shall be made by one individual person who qualifies under the provisions of 26-904, 26-906, 26-908, and 26-911 through 26-921; any license issued pursuant thereto shall be in the name of that person; and the license shall specifically state that the same is issued for the use and benefit of the named corporation or partnership involved. Any revocation or suspension of such a license is binding upon the individual person and the partnership or corporation for the use and benefit of which the license was originally issued. Application shall be made to and filed with the director.

(3) Each applicant for and holder of an outfitter's license or any renewal thereof shall, in the opinion of the director, meet the following qualifications:

(a) be a person of at least 18 years of age, in possession of all natural faculties, of ordinary intelligence, and in such physical condition as to be able to perform his duties as an outfitter;

(b) be a citizen of the United States and a resident of Montana for a full 2 years, unless the residency requirement is waived by the department;

(c) own or hold under written lease or represent a company, corporation, or partnership who owns or holds under written lease the equipment and facilities as are necessary to provide the services advertised, contracted for, or agreed upon between the outfitter and his clients (all equipment and facilities shall be subject to inspection at all reasonable times and places by the department or its designated agent);

(d) be a person who has demonstrated a respect for and compliance with the laws of any state or of the United States and all rules promulgated thereunder as to matters of fish and game, conservation of natural resources, and preservation of the natural ecosystem without pollution thereof;

(e) have not been convicted or forfeited bond of \$100 or more on more than one violation of the fish and game laws of any state or the United States within the past 5 years;

(f) have not, at any time, practiced fraud, deception, or material misrepresentation in procuring any previous outfitter's or guide's license from the state of Montana;

(g) have not, at any time, promulgated any false or misleading advertising relating to the business of outfitting;

(h) have not been finally adjudged by a court of law guilty of any substantial breach of written or oral contract with any person utilizing the applicant's services as an outfitter or guide during the license year immediately preceding that for which the application is made;

(i) have not committed any negligent act or misconduct while acting as an outfitter or guide which negligence or misconduct caused a danger or unreasonable risk of danger to person or property of any client of such outfitter or guide during the license year immediately preceding that for which the application is made;

(j) have not, at any time, been convicted of a felony, unless civil rights have been restored pursuant to law. No person may apply for or hold an outfitter's license during any period of time in which a deferred sentence has been imposed for a felony.

(k) have substantially complied with all department regulations and state and federal laws concerning outfitters and guides, if the applicant has previously held a license as an outfitter or guide;

(l) pass a standard examination administered by the director or an agent designated by him, which examination shall require general and sufficient knowledge displaying and indicating ability to perform the services contemplated with efficiency and with safety to the health and welfare of persons employing such services. The examination shall test the

applicant's knowledge of subjects which shall apply to the type of license applied for in the following subjects:

- (i) fish and game laws and regulations;
- (ii) practical woodsmanship;
- (iii) general knowledge of big game;
- (iv) field preparation of trophies;
- (v) care of game meat;
- (vi) use of outfitter's gear as shown on the application;
- (vii) knowledge of area and terrain;
- (viii) knowledge of firearms;
- (ix) federal and state regulations as applicable to outfitting;
- (x) practical first aid.

(4) An applicant for a professional guide's license shall meet the following requirements:

(a) be a person of at least 18 years of age, in possession of all natural faculties, of ordinary intelligence, and in such physical condition as to be able to perform his duties as a professional guide;

(b) be a citizen of the United States and a resident of Montana as defined in 26-908;

(c) be endorsed and recommended by an outfitter with a valid license.

(5) A resident guide shall have been issued a valid resident wildlife conservation license.

(6) Residence requirements for procuring an outfitter's license are waived as to persons who are citizens of a common boundary state and of a common county thereof to the same extent the home state of the applicant waives such requirements for the residents of Montana, except for fee.

(7) For the purpose of obtaining a guide's license only, nonresident professional guides employed by resident outfitters shall be considered resident professional guides.

(8) Applications shall be accompanied by a license fee as herein stipulated, which will be refunded if and when the application is denied:

- (a) resident outfitter's license fee\$ 50;
- (b) resident professional guide's fee\$ 15;
- (c) nonresident outfitter's license fee\$150;
- (d) nonresident professional guide's fee\$100.

(9) A resident guide's license is a valid Montana wildlife conservation license.

(10) The license fee shall be used to investigate the applicant, to enforce 26-904, 26-906, 26-908, and 26-911 through 26-921, and for administrative costs.

(11) If the nonresident resides in a state requiring residents of the state of Montana to pay in excess of such amounts for a similar license, the fee for such nonresident outfitters or guides shall be the same amount as the higher fee charged in the state where the nonresident resides.

(12) The director in his discretion may cause to be made such additional investigation and inquiry relative to the applicant for outfitter's

license and an applicant's qualifications as he considers advisable. The director may deny or refuse to issue any new license or to renew any previous license if, in his opinion, the applicant does not meet the qualifications herein stated. In the event that any application for license is denied or refused, the director shall immediately notify the applicant, setting forth in the notice the grounds upon which the denial or refusal is based. Final decision as to issuance of renewal licenses shall be made not later than 30 days from the date of receipt of the completed application for renewal and not later than 90 days from the date of receipt of a completed application for a new license. A licensee in good standing is entitled to a new license for the ensuing license year upon complying with the provisions of this section, but is exempt from having to retake the written examination.

(13) Only one application for an outfitter or guide's license may be made any one license year. If any application is denied, subsequent applications by the same applicant for the license year involved are void, except as provided in 26-916(1)(b).

History: En. Sec. 8, Ch. 221, L. 1971; amd. Sec. 13, Ch. 94, L. 1973; amd. Sec. 3, Ch. 541, L. 1975; amd. Sec. 21, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977.

Amendments

The 1973 amendment reduced the age specified in former subdivision (2)(c) from twenty-one to eighteen years; and made a minor change in style.

The 1975 amendment substituted "owned or leased" for "owned or used" in subdivision (1)(f); substituted subdivision (1)(i) for a subdivision which read "Each application for a partnership, company or corporation must be in the name of one individual who qualifies under the provisions of this act"; inserted "holder of," "or any renewal thereof," and "in the opinion of the director" in the preliminary clause of subsection (2); substituted "qualifications" for "requirements" at the end of the preliminary clause in subsection (2); substituted subdivision (2)(a) for a subdivision which read "Be a competent person of good moral character"; deleted former subdivision (2)(c) which read "Be at least eighteen (18) years of age"; deleted former subdivision (2)(d) which read: "Be in such physical condition as to be able to perform his assigned or obligated duties"; redesignated former subdivision (2)(e) as (2)(c); inserted new subdivisions (2)(d) through (k); redesignated former subdivi-

sion (2)(f) as (2)(l); substituted subdivision (3)(a) for a subdivision which read "Be a competent person of good moral character"; deleted former subdivision (3)(c) which read "Be eighteen (18) years of age or older and in such physical condition as to be able to perform his assigned duties"; redesignated former subdivision (3)(d) as (3)(c); inserted the second and third sentences in subsection (7); and added subsection (8).

The 1977 amendment added "is involved" to subdivision (1)(c); redesignated former subdivision (1)(i) as subsection (2); substituted "26-904, 26-906, 26-908, and 26-911 through 26-921" in subsection (2) for "this act"; added the last sentence in subsection (2); redesignated former subsections (2) through (4) as subsections (3) through (5); substituted "26-908" in subdivision (4)(b) for "this act"; divided former subsection (5) into subsections (6) and (7); divided former subsection (6) into subsections (8) through (11); deleted "made to and filed with the fish and game director and" before "accompanied" in subsection (8); redesignated former subsections (7) and (8) as subsections (12) and (13); substituted "licenses" in the fourth sentence of subsection (12) for "applications"; added "except as provided in 26-916(1)(b)" to subsection (13); and made minor changes in phraseology, punctuation and style.

26-916. Kinds of licenses. (1) After receipt of the application and when all the conditions and requirements of 26-904, 26-906, 26-908, and 26-911 through 26-921 have been satisfied, the director shall issue either of the following licenses, depending upon his determination of the applicant's ability and the service that the applicant can perform with the equipment listed on his application:

(a) a general license authorizing him to perform all the functions of an outfitter as that term is defined in 26-904; or

(b) a special license authorizing him to perform only the function of outfitting listed on the license. The license shall be in the form prescribed and shall be valid for the licensing year in which issued. If the application is denied, the director shall notify the applicant, in writing, of the reasons for the denial, and if the reasons are corrected, a license shall be issued upon reapplication thereof.

(2) For the purposes of 26-904, 26-906, 26-908, and 26-911 through 26-921, a person may serve as a professional guide under his employer's license after submitting his application with the proper license fee, until the license is issued or for 10 days after notification of the rejection of the license.

(3) To be valid, a professional guide's license must bear the signature and outfitter's license number of an endorsing outfitter and is valid only while the holder of such license is employed by an endorsing outfitter.

(4) No outfitter's license may be transferred during any license year. An individual person may, upon proper showing, have his outfitter's license amended to indicate that he is holding the license for the use and benefit of a named partnership or corporation.

(5) No person may hold more than one outfitter's license either for his own benefit or for the use and benefit of a partnership or corporation, nor may the name of any partnership or corporation appear on more than one current outfitter's license.

(6) Notwithstanding any other provision or law, a license shall expire on the last day of the license year for which it was issued.

History: En. Sec. 9, Ch. 221, L. 1971; amd. Sec. 4, Ch. 541, L. 1975; amd. Sec. 22, Ch. 9, L. 1977.

Amendments

The 1975 amendment added subsections (4) to (6).

The 1977 amendment deleted "fish and game" before "director" in two places; substituted "26-904, 26-906, 26-908, and 26-911 through 26-921" for "this act" in subsections (1) and (2); and made minor changes in phraseology, punctuation and style.

26-917. Deposit of fees. All fees collected under 26-904, 26-906, 26-908, and 26-911 through 26-921 shall be deposited as provided in 26-121.

History: En. Sec. 10, Ch. 221, L. 1971; amd. Sec. 23, Ch. 9, L. 1977.

Amendments

The 1977 amendment substituted "26-904, 26-906, 26-908, and 26-911 through 26-921" for "this act"; and made minor changes in style.

26-918. Grounds for suspension or revocation of license. Every license, or right to apply for and hold such license, may be suspended or revoked upon any of the following grounds:

(1) Having ceased to meet all of the qualifications for holding a license.

(2) Fraud or deception in procuring a license.

(3) Fraudulent, untruthful or misleading advertising.

(4) Conviction of a felony, until civil rights are restored or until time of any deferred sentence for a felony has expired.

(5) Two convictions, or bond forfeitures, of \$100 or more as to violations of the fish and game or outfitting laws or regulations of the state of Montana or of the United States.

(6) A substantial breach of any contract with any person utilizing the services of the license holder provided that such breach is established as a matter of final judgment in a court of law.

(7) The willful employment of an unlicensed guide by an outfitter.

(8) Negligence or misconduct while acting as an outfitter or guide which negligence or misconduct causes a danger or unreasonable risk of danger to person or property of any client of such outfitter or guide.

History: En. Sec. 11, Ch. 221, L. 1971; amd. Sec. 5, Ch. 541, L. 1975; amd. Sec. 8, Ch. 417, L. 1977.

Amendments

The 1975 amendment inserted "or right to apply for and hold such license" in the preliminary clause; inserted subdivision (1); redesignated former subdivisions (1) to (6) as (2) to (7); deleted former subdivision (7) which read "For failure to comply with the provisions of this act"; added "or until time of any deferred sentence for a felony has expired" to the end of subdivision (4); substituted "Two (2) convictions, or bond forfeitures, of one hundred dollars (\$100) or more as to violations" at the beginning of subdivision (5) for "Repeated convictions of violations"; substituted "fish and game or outfitting laws or regulations of the state of Montana or of the United States" at the

end of subdivision (5) for "fish and game laws of the state of Montana"; deleted "written" before "contract" in subdivision (6); substituted "utilizing the services of the license holder provided that such breach is established as a matter of final judgment in a court of law" for "utilizing his services as pertains to this act" in subdivision (6); deleted "and repeated" after "willful" in subdivision (7); substituted "Negligence" for "Gross negligence" at the beginning of subdivision (8); and added "which negligence or misconduct causes a danger or unreasonable risk of danger to person or property of any client of such outfitter or guide" to the end of subdivision (8).

The 1977 amendment deleted "by the fish and game commission" after "revoked" in the first sentence; and made minor changes in style.

26-919. Procedure for revocation or suspension of license. Proceedings for the revocation or suspension of a license issued hereunder may be taken upon charge or recommendation of any person. All such charges or recommendations must be made in writing, must state the facts upon which such charge or recommendation is based and must be signed and sworn to by the person making the charge or recommendation. Any such charge or recommendation shall be filed with the fish and game director. Thereupon, the fish and game director shall initiate a preliminary investigation of all facts in connection with the charge. A copy of all information shall be transmitted to the advisory council. The advisory council may make recommendation as to the action to be taken provided that any such recommendation shall be made, in writing and delivered to the director, within 20 days after date of transmittal of such information to the council. If the accusation be deemed to be unfounded or trivial, the fish and game director shall dismiss the same and will advise the licensee charged and the complaining party of the action. Should the fish and game director determine the charge or recommendation to have good cause and to be sufficiently founded, he shall recommend to the fish and game commission that the same be approved and the revocation or suspension be effected. The fish and game director thereupon shall cause a copy of the charge, recommendation of the council, and a record of the investigation

to be served upon the licensee involved, not less than 20 days prior to the day set for hearing thereon which said hearing shall be before the fish and game commission at a time and place set by such commission. At the hearing the licensee involved may be represented by counsel. After full, fair and impartial hearing, the fish and game commission may suspend the accused's license or his right to hold a license for a period not to exceed 3 years or may order the license revoked or may dismiss the charge or recommendation based upon the facts shown at the hearing. A revoked or suspended license may be reissued or reinstated at the discretion of the commission.

History: En. Sec. 12, Ch. 221, L. 1971; amd. Sec. 6, Ch. 541, L. 1975; amd. Sec. 9, Ch. 417, L. 1977.

Amendments

The 1975 amendment substituted "council may make recommendation as to the action" in the sixth sentence for "council shall within sixty (60) days recommend the action"; added to the sixth sentence "provided that any such recommendation shall be made, in writing and delivered to the director, within twenty (20) days

after date of transmittal of such information to the council"; substituted "licensee charged" for "accused" in the seventh sentence; inserted "or his right to hold a license" in the eleventh sentence after "accused's license"; and made a minor change in style.

The 1977 amendment deleted "and report his action to the fish and game commission" after "dismiss the same" in the seventh sentence; and made minor changes in style.

26-920. Appeal to district court. Any person who feels aggrieved by the denial of issuance of a license, or suspension or revocation of a license as an outfitter or guide, may appeal to the district court of the county of his residence, within 30 days after the date of such action by filing with the clerk of said court a notice of appeal briefly setting forth the action complained of and appealed from. Summons and copy of the notice of appeal shall be served on the commission and all proceedings shall conform to the code of civil procedure of the state of Montana. Upon such appeal, the action shall be by trial de novo and, upon demand in writing, either party shall be entitled to trial by jury. The court may sustain or reverse the action of the commission or take such other action as the court may deem just and proper. If the commission or the court has ordered a stay of any revocation or suspension and the commission's revocation or suspension is thereafter sustained by the court the period of suspension or revocation shall begin with the first day after the court's action sustaining the decision of the commission.

History: En. Sec. 13, Ch. 221, L. 1971; amd. Sec. 7, Ch. 541, L. 1975; amd. Sec. 10, Ch. 417, L. 1977.

Amendments

The 1975 amendment substituted "action of the director" for "action of the fish and game commission" near the beginning of the first sentence; substituted "or of the fish and game commission in suspending or revoking his license" for "or the suspension or revocation of his license" in the first sentence; changed the time for appeal from "within sixty (60) days after the entry of the order" to "within thirty (30) days after the date of such action"; and added the last sentence.

The 1977 amendment substituted "the denial of issuance of a license, or suspension or revocation of a license" in the first sentence for "any action of the director in denying issuance of a license, or of the fish and game commission in suspending or revoking his license"; and made a minor change in style.

Separability Clause

Section 8, Ch. 541, Laws 1975 read "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

26-921. Enforcement. The warden or ex officio warden designated by the department to primarily administer outfitting and guiding laws and rules, other wardens, and all peace officers shall enforce 26-904, 26-906, 26-908, and 26-911 through 26-921.

History: En. Sec. 14, Ch. 221, L. 1971; amd. Sec. 40, Ch. 511, L. 1973; amd. Sec. 24, Ch. 9, L. 1977.

Amendments

The 1973 amendment substituted "The warden or ex officio warden, designated by the department to primarily administer outfitting and guiding laws and regulations" for "The supervisor of outfitting"; substituted "other wardens" for "state fish and game wardens"; and made minor changes in phraseology.

The 1977 amendment substituted "rules" for "regulations"; substituted "26-904, 26-906, 26-908, and 26-911 through 26-921" for "this act"; and made minor changes in punctuation and phraseology.

Repealing Clause

Section 16 of Ch. 221, Laws 1971 read "Sections 26-901, 26-902 and 26-303.2, R. C.M., 1947, are repealed."

Separability Clause

Section 17 of Ch. 221, Laws 1971 read "The provisions of this act shall be severable, and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitutional or void, the remainder of this act shall continue in full force and effect."

Effective Date

Section 18 of Ch. 221, Laws 1971 read "This act shall be effective May 1, 1972."

26-922. Repealed.

Repeal

Section 26-922 (Sec. 15, Ch. 221, L. 1971), relating to criminal penalty for

violations of outfitters' and taxidermists' licensing law, was repealed by Sec. 54, Ch. 9, Laws 1977.

CHAPTER 10—DISPOSAL OF FINES—DUTIES OF COURTS—EXCEPTIONS FROM ACT

Section

- 26-1001. Disposition of fines, bond and penalties.
- 26-1002. Payment of cost bill to county wherein costs were incurred.
- 26-1006. Exception in cases of extreme hunger.
- 26-1008. Taking fish or game for scientific purposes.

26-1001. (3753) Disposition of fines, bond and penalties. All fines, bonds, and penalties mentioned in this title may be collected by civil action in the name of the state in any court of competent jurisdiction. All fines, bonds, and costs shall be collected without stay of execution.

History: En. Sec. 74, Ch. 173, L. 1917; re-en. Sec. 3753, R. C. M. 1921; amd. Sec. 25, Ch. 77, L. 1923; amd. Sec. 41, Ch. 511, L. 1973.

Amendments

The 1973 amendment deleted "upon proper complaint being filed, and the amount of all fines and bonds collected under the provisions of this act shall be paid to the state game warden and by

him paid to the state treasurer and by him placed to the credit of the fund to be known as the fish and game fund" from the end of the first sentence; deleted "and the defendant or defendants may by order of the court be confined in the county jail of the county until such fine and costs are served out at the rate of \$2.00 per day" at the end of the section; and made minor changes in phraseology.

26-1002. (3754) Payment of cost bill to county wherein costs were incurred. In a prosecution for the violation of fish and game laws where costs are incurred, a cost bill shall be prepared. The cost bill shall include the cost of board of prisoners and shall be presented to the department of administration. If the costs are allowed, the state treasurer shall pay

them, out of the fish and game moneys in the earmarked revenue fund, to the treasurer of the county where the costs were incurred.

History: En. Sec. 75, Ch. 173, L. 1917; re-en. Sec. 3754, R. C. M. 1921; amd. Sec. 42, Ch. 511, L. 1973.

Amendments

The 1973 amendment substituted "department of administration" for "state

board of examiners" at the end of the first sentence; substituted "fish and game moneys in the earmarked revenue fund" for "state game and fish fund" in the second sentence; and made minor changes in style and phraseology.

26-1006. (3758) Exception in cases of extreme hunger. When it is shown that any violation of the provisions of this title was for the purpose of preventing great suffering by hunger of any person which could not otherwise have been avoided, the provisions of this title shall not apply to the case.

History: En. Sec. 79, Ch. 173, L. 1917; re-en. Sec. 3758, R. C. M. 1921; amd. Sec. 25, Ch. 9, L. 1977.

Amendments

The 1977 amendment substituted "this title" in two places for "this act" and made minor changes in phraseology.

26-1008. (3760) Taking fish or game for scientific purposes. It is lawful for the duly accredited representative of an accredited school, college, university, or other institution of learning or of any governmental agency, who may be investigating a scientific subject making it necessary, to take, kill, capture, and possess for that purpose any birds, fish, or animals protected by Montana law or state fish and game rule. He may take, kill, and capture protected or unprotected birds, fish, or animals in any way, except by the explosion of dynamite. No more of the birds, fish, or animals may be taken than are necessary for the investigation. A person who desires to engage in the scientific investigation shall apply to the director for a permit. The director may set qualifications for persons to whom permits are issued and may place special authorizations or special requirements and limitations on any permit. If the director is satisfied of the good faith and qualifications of the applicant, he shall issue a permit, which shall place a time limit on the collections and may place a restriction on the number of birds, fish, or animals to be taken and shall require a report of the numbers and species of animals taken by collection areas. The permittee shall pay \$5 for the permit. The permittee may not take, have, or capture any other or greater number of birds, fish, or animals than are mentioned in the permit. Any representative of an accredited school, college, university, or other institution of learning who may have various students or associates assisting him throughout the year may apply to have his permit issued to himself and his associates. The associates, when carrying a copy of the permit, shall have the same authorizations and restrictions as the original applicant. The original applicant shall keep a record of all associates to whom he issued a copy of his permit and of the times for which each associate is issued a copy. The original applicant is responsible for his associates' use of the permit or copies of the permit, including their reports of species and numbers of animals collected.

History: En. Sec. 81, Ch. 173, L. 1917; re-en Sec 3760, R. C. M. 1921; amd. Sec. 27, Ch. 224, L. 1947; amd. Sec. 1, Ch. 116,

L. 1973; amd. Sec. 43, Ch. 511, L. 1973; amd. Sec. 49, Ch. 9, L. 1977.

Amendments

Chapter 116, Laws of 1973, inserted "accredited" before "school" near the beginning of the section; inserted "or of any governmental agency" in the first sentence; substituted "protected by Montana law or state fish and game commission regulation" for "found in this state" in the first sentence; substituted "protected or unprotected birds, fish or animals" for "the same" after "take, kill and capture" in the first sentence; substituted references to the state director of fish and game for references to the state game warden throughout the section; substituted "permit" for "license" throughout the section; inserted a new second sentence similar to the present fifth sentence; inserted "and qualifications" after "good faith" in the third sentence, now the sixth sentence; substituted "collections" for "investigations" in the third sentence, now the sixth sentence; substituted "may" for "shall" before "place a restriction" in the third sentence, now the sixth sentence; inserted "and shall require a report of the numbers and species of animals taken by collection area" in the third sentence, now the sixth sentence; inserted four new sentences similar to the present ninth to twelfth sentences; and made minor changes in phraseology.

Chapter 511, Laws of 1973, substituted "representative of an accredited school" for "accredited representative of any school" in the first sentence; inserted "or of any governmental agency" in the first sentence; substituted "protected by Montana law or state fish and game regulation" for "found in this state" at the end of the first sentence; substituted "protected or unprotected birds, fish or animals" for "the same" in the second sentence; substituted "director" for "state game warden" in the fourth and sixth sentences; substituted "permit" for "license" at the end of the fourth sentence; inserted the fifth sentence; substituted "on the collections and may" for "upon such investigation, and shall" in the sixth sentence; added "and shall require a report of the numbers and species of animals taken by collection areas" to the end of the sixth sentence; inserted the ninth, tenth, eleventh and twelfth sentences; and made minor changes in style, phraseology and punctuation.

The 1977 amendment substituted "rule" at the end of the first sentence for "regulation"; deleted "A person violating this section is guilty of a misdemeanor, punishable as provided by section 26-324" at the end of the section; and made minor changes in punctuation and style.

CHAPTER 11—GAME PRESERVES, MIGRATORY BIRD RESERVATIONS**Section**

26-1101. Creation of game preserves—general provisions.

26-1102. Sun River game preserve.

26-1128. Gates of the Mountain Game Preserve.

26-1101. (3761) Creation of game preserves—general provisions. (1) There are, for the better protection of all the game animals and birds within their limits, game preserves within the state. Except as provided in this section, no person may, within the limits of a game preserve created by the legislature or by the commission, hunt for, trap, capture, kill, or take game animals, fur-bearing animals, or birds of any kind. Within the limits of a preserve, a person may not carry or discharge firearms, create any unusual disturbance tending to frighten or drive away any of the game animals or birds, or chase them with dogs. The commission may declare any preserve open to the trapping of fur-bearing animals during the regular open season.

(2) Permits to capture animals or birds for the purpose of propagation or for scientific purposes, to trap fur-bearing animals, to destroy mountain lions, wolves, foxes, coyotes, wildcats, lynx, or other predatory animals or birds, or to carry firearms may be issued by the director upon the payment of the fee and in accordance with rules established for the preserve by the commission.

History: En. Sec. 83, Ch. 173, L. 1917; re-en. Sec. 3761, R. C. M. 1921; amd. Sec. 28, Ch. 224, L. 1947; amd. Sec. 1, Ch. 31, L. 1949; amd. Sec. 44, Ch. 511, L. 1973; amd. Sec. 50, Ch. 9, L. 1977.

Amendments

The 1973 amendment numbered the subsections; deleted "of Montana, and more particularly hereinafter described as to their exterior limits by sections 26-1102 to 26-1104, 26-1106, 26-1107, 26-1110, 26-1112, 26-1114, 26-1116, 26-1118" from the end of the first sentence; deleted "or cause to be hunted for, trapped or killed, any"

following "hunt for, trap, capture, kill, or take" in the second sentence of subsection (1); substituted "director" for "state game warden" in the first sentence of subsection (2); and made minor changes in style, phraseology and punctuation.

The 1977 amendment deleted "fish and game" before "commission" in the second sentence of subsection (1); deleted "A person violating this section or any other law relating to game preserves, is guilty of a misdemeanor and shall be punished as provided by section 26-324" at the end of subsection (2); and made minor changes in punctuation and phraseology.

26-1102. (3763) Sun River game preserve. There is a Sun River game preserve described as follows: beginning at a point on the continental divide of the Rocky Mountains, due south of the head or source of the south fork of the north fork of Sun River, in what will be, when surveyed, section eight, township eighteen north of range ten west, Montana meridian; thence due north from the crest of the continental divide to the head of the south fork of the north fork of Sun River; thence northerly along and down the course of the south fork of the north fork of Sun River as it winds and turns to its confluence with the north fork of the north fork of Sun River; thence northerly along the course of the north fork of the north fork of Sun River as it winds and turns to its head or source; thence due north to the crest of the continental divide of the Rocky Mountains; thence along the crest of the continental divide of the Rocky Mountains southwesterly and southerly to the place of beginning, intending hereby to include in said game preserve all that territory lying between the south fork of the north fork and the north fork of the north fork of Sun River on the east and the continental divide of the Rocky Mountains on the west.

History: En. Sec. 1, Ch. 34, L. 1913; re-en. Sec. 83, Ch. 173, L. 1917; re-en. Sec. 3763, R. C. M. 1921; amd. Sec. 26, Ch. 9, L. 1977.

Amendments

The 1977 amendment inserted "There is a Sun River game preserve described as follows" at the beginning of the section; and made minor changes in phraseology, punctuation and style.

26-1120, 26-1121.

Compiler's Notes

Section 13, Ch. 417, Laws 1977, substituted references to the department of fish

and game in these sections for references to the state fish and game commission.

26-1123, 26-1124.

Compiler's Notes

Section 13, Ch. 417, Laws 1977, substituted references to the department of fish

and game in these sections for references to the state fish and game commission.

26-1128. Gates of the Mountain Game Preserve. Beginning in Section 2, Township 12 North, Range 3 West, at the southeast corner of upper Holter Lake and proceeding westerly along the northern shoreline of said upper Holter Lake in the Gates of the Mountains area located in Lewis

and Clark County, Montana, and then northerly along Stoney Point Beacon Road, then northerly along the power line to said beacon, then along the bulldozer road to the point of the ridge in Section 23, Township 13 North, Range 3 West, then northerly to the Missouri River, then easterly across said river and lake to the Forest Service Boundary to the Wilderness Boundary, then south following the Wilderness Boundary to the southeast corner of Section 1, Township 12 North, Range 3 West, then west back to the upper Holter Lake to the point of beginning, intending hereby to include in said game preserve all that territory adjacent to the Gates of the Mountains area, shall be called and known as the Gates of the Mountains Game Preserve.

It shall be unlawful for any person to shoot, kill, capture or destroy or in any way injure any bird or fur-bearing animal in said area or to interfere with their eggs or nests or to shoot at, wound or kill any bird or fur-bearing animal within said preserve. Said area shall be closed to all hunting at all times.

History: En. Sec. 1, Ch. 115, L. 1971.

a game preserve in the area of the Gates of the Mountains, Lewis and Clark County, Montana.

Title of Act

An act to provide for the creation of

CHAPTER 12—PERMITS FOR BREEDING GAME BIRDS AND ANIMALS —OTHER REGULATIONS

Section

- 26-1201. Permit for breeding and propagating game birds and animals and fur-bearing animals—migratory birds excluded.
- 26-1205. Regulation of roadside menageries or zoos—definitions.
- 26-1206. Permits—adoption and enforcement of regulations.
- 26-1207. Permit required—application—fee—expiration and renewal—inapplicable to governmental entity—misdemeanor—compliance with standards—transferring permit.
- 26-1208. Permit for additional animals—application—conditions of issuance—capture of wild animals—ownership to remain in state—regulation of sales and transfers.
- 26-1209. Menagerie permit not a commercial game propagating permit—restrictions on disposal of birds or animals and offspring.
- 26-1210. Inspection—permit revocation—redemption of wildlife.
- 26-1211. Enforcement—penalty—confiscation or disposal of illegally kept animals—appeal.
- 26-1212. Disposal of fines, bonds or penalties—fees.

26-1201. (3777) Permit for breeding and propagating game birds and animals and fur-bearing animals—migratory birds excluded. Any person, or persons, firm, company or corporation before engaging in the business or occupation of propagating, owning and controlling game animals except buffalo, game birds (except migratory game birds), or fur-bearing animals of the state of Montana, shall first procure a game or fur farm permit from the state fish and game director. The owning, controlling, propagating, salvage, banding, transportation, shipping, import, export, acquisition and scientific collecting of migratory game birds shall be in compliance with regulations of the department adopted pursuant to section 26-320.

Such game or fur farm permit shall be issued to responsible applicants who own or lease the premises on which their operations are to be conducted, when such applicant has so fenced the place where such game

or fur farm is located, with fencing material, approved by the state fish and game director, so that no wild or public animals of like species can mix with those confined.

Foundation stock for a fur farm may be obtained from the department by a free permit authorizing game farm permit holders to capture a designated number of fur-bearing animals, with the exception of beaver or marten, for breeding stock, under such rules and regulations as the department shall prescribe. Such fur-bearing animals captured under permit shall not be sold or pelted for the period of one (1) year after their capture and the skins or pelts of any fur-bearing animals accidentally killed during their capture or for the period of one (1) year thereafter shall be turned over to the state fish and game director.

A charge shall be made for the capture of each beaver or marten by fur farm permit holders for foundation stock, under authorization of the state fish and game director as follows:

Beaver—fifteen dollars (\$15) each.

Marten—twenty-five dollars (\$25) each.

The skins, pelts or products of such beaver and marten on game or fur farms shall be tagged individually with tags purchased from the department for a fee of five cents (5¢) each. Each game farm or fur farm shall be open to complete inspection by the state fish and game director or his wardens at any reasonable time, inclusive of the whole area thereof, all stock thereon, and all structures, pens, and other devices thereon. Game farm or fur farm permits issued under the provisions of this act shall be valid during the time such game or fur farm is operated and conducted according to law, provided that on or before January 31 of each year a report shall be submitted by the licensee to the state fish and game director, showing the numbers and species of game or fur-bearing animals on hand on January 1, preceding, and the number and kinds of animals pelted, bought or sold during the year.

Any person or persons, except as herein provided, who, at any time, in any part of the state of Montana, without the consent of the owner or caretaker of any enclosure within which fur-bearing animals are kept for breeding purposes, and on the fence of which enclosure are kept posted notices forbidding trespassing on the premises where the said animals are kept, which notices must be plainly discernible at a distance of not less than twenty-five (25) yards therefrom, shall pass within the said fence or such enclosure or climb over, break or cut through the same for the purpose of entering the said enclosure, etc., or for any other purpose whatsoever, shall be guilty of a misdemeanor, and liable to the penalty hereinafter provided.

Any person or persons, firm, company or corporation engaging in the business or occupation of fox or mink farming whose original foundation stock is or was not captured from the wild in the state of Montana shall apply for and be issued free of charge a numbered certificate of identification for such fur farm, which certificate shall be nontransferable and valid for the life of the business; provided, no other provisions of this section shall be construed to or shall in any manner affect such person, or persons,

firm, company or corporation engaging in the business or occupation of fox or mink farming whose original foundation stock is or was not captured from the wild in the state of Montana.

History: En. Sec. 84, Ch. 173, L. 1917; amd. Sec. 1, Ch. 200, L. 1919; re-en. Sec. 3777, R. C. M. 1921; amd. Sec. 31, Ch. 192, L. 1925; amd. Sec. 1, Ch. 73, L. 1933; amd. Sec. 1, Ch. 120, L. 1947; amd. Sec. 1, Ch. 43, L. 1967; amd. Sec. 1, Ch. 78, L. 1971; amd. Sec. 13, Ch. 417, L. 1977.

Amendments

The 1971 amendment inserted "except buffalo" in the first sentence of the first paragraph; and made minor changes in phraseology.

26-1205. Regulation of roadside menageries or zoos—definitions. As used in sections 26-1205 through 26-1212, unless the context requires otherwise:

(1) "Roadside menagerie or zoo" means any place where one (1) or more wild animals, including birds, reptiles, and the like are kept in captivity, for the evident purpose of exhibition or attracting trade. It does not include the exhibition of any animal by an educational institution or in a zoological garden chartered as a nonprofit corporation by the state and does not include animals exhibited by any traveling theatrical exhibition or circus.

(2) "Wild animal" means an animal wild by nature as distinguished from the common domestic animals, whether the animal was bred or reared in captivity, and includes birds and reptiles.

History: En. Sec. 1, Ch. 130, L. 1969; amd. Sec. 45, Ch. 511, L. 1973.

Title of Act

An act to require the fish and game commission to control and regulate roadside menageries or zoos.

Amendments

The 1973 amendment substituted "sec-

tions 26-1205 through 26-1212, unless the context requires otherwise" for "this act, unless the context clearly indicates otherwise" in the preliminary clause; deleted former subdivision (1) which defined "Commission"; redesignated former subdivisions (2) and (3) as (1) and (2); deleted former subdivision (4), defining "Director"; and made minor changes in style, phraseology and punctuation.

26-1206. Permits—adoption and enforcement of regulations. (1) The department shall grant permits for roadside menageries or zoos.

(2) The department shall adopt and enforce reasonable regulations for the housing, care, treatment, feeding and sanitation of animals kept in roadside menageries, and for the protection of the public from injury by such animals.

History: En. Sec. 2, Ch. 130, L. 1969; amd. Sec. 13, Ch. 417, L. 1977.

26-1207. Permit required—application—fee—expiration and renewal—inapplicable to governmental entity—misdemeanor—compliance with standards—transferring permit. (1) It is unlawful for any person to operate a roadside menagerie without a permit. Application for a permit shall be made to the director on a form prescribed by him. The annual permit fee for five (5) or less animals shall be ten dollars (\$10.00). The annual permit fee for more than five (5) animals shall be twenty-five dollars (\$25.00). Permits shall expire on December 31, but may be renewed upon

payment of the annual fee. This section shall not apply to the United States, the state of Montana, or any county or city. Any person who shall subscribe to any false statement in application for a permit shall be guilty of a misdemeanor.

(2) No permit shall be granted by the department until it has satisfactorily verified that the provisions for housing and caring for such animals and for protecting the public are proper and adequate and in accordance with the standards established by the department.

(3) A permit is not transferable to another person unless the roadside menagerie or zoo to which it pertains is also transferred to the same person. The director's approval must be obtained prior to such permit transfer and prior to a transfer of any wild animals held under the permit.

History: En. Sec. 3, Ch. 130, L. 1969;
amd. Sec. 13, Ch. 417, L. 1977.

26-1208. Permit for additional animals—application—conditions of issuance—capture of wild animals—ownership to remain in state—regulation of sales and transfers. It is unlawful to obtain wild animals for a menagerie or zoo by capture from the wild or by purchase except in accordance with the terms of a permit. Application for such permit shall be made to the director on a form prescribed by him. After investigation by the department, the director may issue such permit without charge if he finds (a) that all provisions of this act and of the department regulations are complied with by the applicant; and (b) that the number and species of wildlife desired is not excessive under the circumstances. If wild animals are to be obtained by capture, the permit shall designate the number and the means of capture, but ownership of the wild animals captured shall remain in the state of Montana. Nongame animals may be bought, sold or transferred under such regulations as the department may prescribe.

History: En. Sec. 4, Ch. 130, L. 1969;
amd. Sec. 13, Ch. 417, L. 1977.

26-1209. Menagerie permit not a commercial game propagating permit—restrictions on disposal of birds or animals and offspring.—A menagerie permit cannot be construed as a commercial game propagating permit and the holder of such permit must not, under any circumstances, sell or attempt to sell any of the original game birds or game animals or the progeny thereof. A game propagating permit is required to propagate and sell game birds and game animals for commercial purposes. A fur-farming permit is required to propagate and sell fur-bearing animals. All offspring of game animals, game birds or fur-bearing animals are the property of the state wherein the menagerie is located, and must be disposed of by the state.

History: En. Sec. 5, Ch. 130, L. 1969.

26-1210. Inspection — permit revocation — redemption of wildlife. All roadside menageries or zoos and all equipment used in connection therewith shall be open to inspection at all reasonable hours. If upon inspection it is found that the menagerie or zoo is not being operated in accordance with this act or with the department regulations, the director shall revoke the

permit without right of renewal and shall redeem possession of all wildlife obtained by capture or unlawful propagation.

History: En. Sec. 6, Ch. 130, L. 1969;
amd. Sec. 13, Ch. 417, L. 1977.

26-1211. Enforcement—penalty—confiscation or disposal of illegally kept animals—appeal. (1) The provisions of this act shall be enforced by any warden or any other legally authorized officer. Any person violating the provisions of this act shall, upon conviction, be punished as provided in 26-324, and at the discretion of the court the permit and all rights and privileges inherent therein may be forfeited.

(2) Any animals being kept in violation of any section of this act may be confiscated or ordered disposed of at the discretion of the director. The permittee may appeal to the commission within 20 days of the date of the order to confiscate and the commission shall hold a hearing on such an appeal and the decision of the commission shall be final.

History: En. Sec. 7, Ch. 130, L. 1969;
amd. Sec. 5, Ch. 465, L. 1977.

Amendments

The 1977 amendment divided the section into subsections; deleted "state fish and game" before "warden" in the first sentence of subsection (1); substituted "as provided in 26-324" in the second sen-

tence of subsection (1) for "by a fine of not more than two hundred fifty dollars (\$250.00), imprisonment for a period of not more than ten (10) days, or both"; deleted "state fish and game" before "director" at the end of the first sentence of subsection (2); and made a minor change in style.

26-1212. Disposal of fines, bonds or penalties—fees. Fines, bonds, or penalties shall be administered and disposed of in accordance with the provisions of section 26-121. Fees obtained under sections 26-1205 through 26-1212 shall be deposited with the state treasurer and credited to the earmarked revenue fund, fish and game account.

History: En. Sec. 8, Ch. 130, L. 1969;
amd. Sec. 46, Ch. 511, L. 1973.

Amendments

The 1973 amendment changed the stat-

utory reference at the end of the first sentence from section 26-1001 to 26-121; and substituted "sections 26-1205 through 26-1212" for "this act" in the second sentence.

CHAPTER 13—FUR DEALER'S LICENSE AND REGULATION

Section

- 26-1302. Records to be kept by fur dealers—inspection.
26-1303. Persons required to procure fur dealer's license.
26-1306. Violations.

26-1302. (3778.4) Records to be kept by fur dealers—inspection. (1) A fur dealer shall keep a book in which shall be recorded separately on the date of each transaction the following facts:

(a) The number and kind of all skins or pelts purchased or sold by the fur dealer;

(b) The place where the skins or furs were killed or trapped and a separate record of all the skins or pelts as were killed or trapped outside this state;

(c) The trapping license number under which the furs or pelts were taken in cases where a trapper's license is required;

(d) The names and addresses of the persons to whom the skins or pelts were sold or from whom they were purchased.

(2) This book shall be open at all reasonable times to the inspection of the state fish and game director or any warden, or any United States game warden, and shall be preserved and accessible for one year after the expiration of any license granted to the fur dealer.

History: En. Sec. 2, Ch. 42, L. 1929; amd. Sec. 47, Ch. 511, L. 1973.

fish and game warden" in subsection (2); substituted "warden" for "his deputies" in subsection (2); and made minor changes in style, phraseology and punctuation.

Amendments

The 1973 amendment numbered the subsections; substituted "director" for "state

26-1303. (3778.5) Persons required to procure fur dealer's license. A fur dealer shall, before buying, selling, or in any manner dealing in the skins or pelts of any fur-bearing or predatory animal within this state secure a fur dealer's license from the director. No license is required for a hunter or trapper selling skins or pelts which he has lawfully taken, nor for a person not a fur dealer who purchases skins or pelts exclusively for his own use and not for sale.

History: En. Sec. 3, Ch. 42, L. 1929; amd. Sec. 48, Ch. 511, L. 1973.

tor" for "state fish and game warden" at the end of the first sentence; and made minor changes in style, punctuation and phraseology.

Amendments

The 1973 amendment substituted "direc-

26-1306. (3778.8) Violations. No person, firm, company, or corporation may violate any of the provisions of 26-1301 through 26-1305.

History: En. Sec. 6, Ch. 42, L. 1929; amd. Sec. 33, Ch. 224, L. 1947; amd. Sec. 51, Ch. 9, L. 1977.

guilty of a misdemeanor and upon conviction thereof, shall be punishable as provided by section 26-324" at the end of the section; and made minor changes in phraseology and style.

Amendments

The 1977 amendment deleted "shall be

CHAPTER 14—FISH RESTORATION AND MANAGEMENT PROJECTS

26-1402, 26-1403.

Compiler's Notes

Section 13, Ch. 417, Laws 1977, substituted references to the department of fish

and game in these sections for references to the state fish and game commission.

CHAPTER 15—CONSTRUCTION AND HYDRAULIC PROJECTS AFFECTING FISH AND GAME

Section

26-1505. Refusal by applicant to modify plans—arbitration of disputes.

26-1507. Irrigation projects exempt.

26-1508. Reports and objections to federal actions injuring fish and wildlife—files and records.

26-1509. Penalty—fine—restoration.

26-1510. Short title.

26-1511. Policy of state.

- 26-1512. Definitions.
- 26-1513. Notice of project.
- 26-1514. Procedure for considering projects—team.
- 26-1515. Arbitration panel—costs.
- 26-1516. Vested water rights preserved.
- 26-1517. Emergencies—procedure.
- 26-1518. Modification of plan—cost sharing.
- 26-1519. Application of Flood Plain Management Act.
- 26-1520. Rules—minimum standards.
- 26-1521. Judicial review.
- 26-1522. Public nuisance.
- 26-1523. Penalty—misdemeanor—restoration.

26-1502. Notice of projects to be given fish and game commission—contents of notice.

History: En. Sec. 2, Ch. 10, L. 1965; amd. Sec. 1, Ch. 133, L. 1971.

Section 13, Ch. 417, Laws 1977, substituted references to the department of fish and game in this section for references to the state fish and game commission.

Compiler's Notes

Laws 1971, Ch. 133 purported to amend this section but made no change. For section, see parent volume.

26-1503, 26-1504.

Compiler's Notes

Section 13, Ch. 417, Laws 1977, substituted references to the department of fish

and game in these sections for references to the state fish and game commission.

26-1505. Refusal by applicant to modify plans—arbitration of disputes.

(1) If the department notifies the applicant that the construction will adversely affect fish or game habitat, the applicant, within 15 days after receiving the recommendations and alternatives of the department, shall notify the department if it refuses to modify its plans in accordance with the recommendations or alternatives. In the event of refusal, the disagreement shall be arbitrated as provided in subsection (2) of this section.

(2) Upon receipt of a notice of refusal, the department shall determine if it wants the disagreement arbitrated. Within 10 days after an affirmative determination and after notice to the applicant, the department shall notify, in writing, all district judges of the judicial district or districts in which the project is located that an arbitration board is needed. Within 5 days of receipt of notification, the judges shall appoint three people from the county or counties in which the project is located to an arbitration committee. Within 10 days after the committee is appointed, it shall meet, hear testimony from all the parties concerned, and issue a decision signed by at least two members of the committee. The decision shall be binding on all parties concerned. Travel expenses of the arbitrators, shall be allowed as in 59-538, 59-539, and 59-801, as amended, and shall be divided equally among the agencies involved.

History: En. Sec. 5, Ch. 10, L. 1965; amd. Sec. 2, Ch. 133, L. 1971; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 5, Ch. 453, L. 1977.

plicant" for "for other agency or agencies involved" in the second sentence of subsection (2); and substituted "parties concerned" for "agencies concerned" in the fourth sentence of subsection (2).

Amendments

The 1971 amendment substituted "ap-

The 1977 amendment substituted "Travel expenses of the arbitrators, shall be al-

lowed as in 59-538, 59-539, and 59-801, as amended" in the last sentence of subsection (2) for "The actual and necessary

expenses of the arbitrators"; and made minor changes in phraseology and style.

26-1507. Irrigation projects exempt. This act shall not apply to any irrigation district project or any other irrigation system.

History: En. Sec. 7, Ch. 10, L. 1965; amd. Sec. 3, Ch. 133, L. 1971.

project presently operating, or that may be constructed in the future or" after "shall not apply"; and substituted "system" for "project" at the end of the section.

Amendments

The 1971 amendment deleted "to any state water conservation board irrigation

26-1508. Reports and objections to federal actions injuring fish and wildlife—files and records. The Montana state fish and game department shall observe acts and omissions on the part of the government of the United States and its agencies within the state of Montana which do, will or might affect adversely the fish and wildlife resources, including but not limited to the fishing streams within the state, and upon receiving such information, the department shall without delay send formal notification in writing, by certified mail, to the appropriate federal agency or agencies involved, setting forth in detail the appropriate objections of the state of Montana to the acts and omissions aforesaid. The department shall keep complete files and records, available for public inspection, of all matters and things done, and all communications and correspondence sent and received, pursuant to this section.

History: En. Sec. 4, Ch. 133, L. 1971; amd. Sec. 11, Ch. 417, L. 1977.

Amendments

The 1977 amendment deleted "and report to the Montana state fish and game commission concerning" after "department shall observe" near the beginning of the first sentence; substituted "upon receiving such information, the department shall" in the first sentence for "upon receiving such reports, the said commission shall"; and substituted "the department" at the beginning of the last sentence for "said commission."

Title of Act

An act amending sections 26-1502, 26-1505, and 26-1507, R. C. M., 1947, and adding new sections establishing the policy of the state of Montana on protection of fishing streams, providing for submission of plans for construction and hydraulic projects affecting such streams to the Montana fish and game commission, for review of such plans and exempting certain projects and parties.

26-1509. Penalty—fine—restoration. An agency, under section 26-1502, violating provisions of this chapter shall be assessed a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), for each day of continuing violation, but not more than a total of one thousand dollars (\$1,000); and in addition, at the discretion of the court, the agency shall restore the damaged stream to its prior condition. Employees of an agency, acting in the ordinary course of their employment under directions of a superior, are not liable for violations under this section. The department may institute and maintain in the name of the state enforcement proceedings under this section. All fines assessed under this act shall be deposited in the earmarked revenue fund for the use of the department.

History: En. 26-1509 by Sec. 1, Ch. 339, L. 1975; amd. Sec. 13, Ch. 417, L. 1977.

Title of Act

An act to provide an assessment for vio-

lation of chapter 15 of Title 26, relating to construction and hydraulic projects affecting fish and game.

Separability Clause

Section 2 of Ch. 339, Laws 1975 read "If a part of this act is invalid, all valid

parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that the severable from the invalid applications."

26-1510. Short title. This act may be cited as "The Natural Streambed and Land Preservation Act of 1975."

History: En. 26-1510 by Sec. 1, Ch. 463, L. 1975.

Title of Act

An act to provide for a policy of preserving the natural or existing shape,

form and course of streams to activities of private persons or organizations; and in so doing to keep soil erosion and sedimentation to a minimum in the state of Montana; and to provide for penalties and enforcement.

26-1511. Policy of state. It is the policy of the state of Montana that its natural rivers and streams, and the lands and property immediately adjacent to them within the state are to be protected and preserved to be available in their natural, or existing state, and to prohibit unauthorized projects and in so doing to keep soil erosion and sedimentation to a minimum, except as may be necessary and appropriate after due consideration of all factors involved. Further, it is the policy of this state to recognize the needs of irrigation and agricultural use of the rivers and streams of the state of Montana; and to protect the use of water for any useful or beneficial purpose as guaranteed by the constitution of the state of Montana.

History: En. 26-1511 by Sec. 2, Ch. 463, L. 1975.

26-1512. Definitions. As used in this act:

(1) "Stream" means any natural perennial flowing stream, or river, its bed and immediate banks.

(2) "Person" means any natural person, corporation, firm, partnership, association or other legal entity, not covered under section 26-1502.

(3) "District" means a conservation district under Title 76, chapter 1, in which the project will take place; a grass conservation district, under Title 46, chapter 23, where no conservation district exists; or the board of county commissioners where a district does not exist.

(4) "Supervisors" means the board of supervisors of a conservation district, the directors of a grass conservation district, or the board of county commissioners where a proposed project is not within a district.

(5) "Project" means a physical alteration or modification of a stream in the state of Montana which results in a change in the state of the stream in contravention of section 26-1511.

(6) "Applicant" means any person presenting notice of a project to the supervisors.

(7) "Department" means the Montana department of fish and game.

(8) "Team" means one (1) representative of the supervisors, one (1) representative of the department, and the applicant or his representative.

History: En. 26-1512 by Sec. 3, Ch. 463,
L. 1975.

26-1513. Notice of project. (1) A person planning to engage in a project shall present written notice of the project to the supervisors before any portion of the project takes place.

(2) The notice shall include the location, general description, and preliminary plan of the project.

History: En. 26-1513 by Sec. 4, Ch. 463,
L. 1975.

26-1514. Procedure for considering projects—team. (1) The supervisors shall receive all notices of proposed projects within their district. They shall, within 5 days of receipt of a notice, examine and investigate the notice and determine whether the proposal is for a project. Within the 5 days, they shall send a copy of their determination to the department and the applicant. If the supervisors determine that the proposal is not a project, the applicant may, upon receipt of written notice, proceed with the proposed activity.

(2) If the supervisors determine that the proposal is for a project, the department shall, within 5 days of receipt of the determination, notify the supervisors whether the department requests an on-site inspection by a team.

(3) The supervisors shall call a team together within 20 days of receipt of the request of the department for an on-site inspection. A member of the team shall notify the supervisors in writing within 5 days after notice of the call for an inspection, of his waiver of participation in the inspection. If the department does not request an on-site inspection within the time specified above, the supervisors may deny or approve the project or may make recommendations for alternative plans.

(4) Each member of the team shall recommend in writing, within 50 days of the date of application, denial, approval, or modification of the project to the supervisors. The applicant may waive participation in this recommendation.

(5) The supervisors shall review the proposed project and affirm, overrule, or modify the individual team recommendations and notify the applicant and team members, within 60 days of the date of application, of their decision.

(6) When a member of the team disagrees with the supervisors' action, he may ask, within 5 days of receipt of the supervisors' decision, that an arbitration panel, as provided in 26-1515, be appointed to hear the dispute and make a final written decision thereon.

(7) Upon written notice, with a recommendation or alternative plan, by the supervisors to the applicant, the applicant, within 15 days, shall notify the supervisors in writing if he wishes to proceed with the project in accordance with the recommendations or alternative plans. No work

may be commenced on a project before the end of this 15-day period unless written permission is given by all team members. If the written decision of the supervisors approves the proposed project without recommendation or alternative plan, the applicant may proceed with the project upon the expiration of 10 days after receipt of the decision.

(8) The supervisors may extend, upon the request of a team member, the time limits provided in subsections (4) and (5) where, in their determination, the time provided is not sufficient to carry out the purposes of this act. The time extension may not, in total, exceed 1 year from date of application. The applicant shall be notified, within 60 days of date of application, of the initial time extension and shall be notified immediately of any subsequent time extensions.

(9) No work on a project under this act may take place without the written consent of the supervisors.

History: En. 26-1514 by Sec. 5, Ch. 463, L. 1975; amd. Sec. 1, Ch. 140, L. 1977.

in the 5 days, they shall" at the beginning of the third sentence of subsection (1) for "They shall, within such period"; and made minor changes in phraseology, punctuation and style.

Amendments

The 1977 amendment substituted "With-

26-1515. Arbitration panel—costs. (1) The arbitration panel shall consist of three (3) members chosen by the senior judge of the judicial district in which the dispute takes place. The members shall be residents of that judicial district at the time of selection. This panel shall sit for only that period of time necessary to settle the dispute before it and will review the proposed project in line with the policy set forth in section 26-1511.

(2) Cost of the arbitration panel, computed as for jurors' fees under section 25-401, shall be borne by the contesting party or parties; all other parties shall bear their own costs.

History: En. 26-1515 by Sec. 6, Ch. 463, L. 1975.

26-1516. Vested water rights preserved. This act shall not impair, diminish, divest, or control any existing or vested water rights under the laws of the state of Montana or the United States.

History: En. 26-1516 by Sec. 7, Ch. 463, L. 1975.

26-1517. Emergencies—procedure. (1) The provisions of this act do not apply to those actions which are necessary to safeguard life or property, including growing crops, during periods of emergency. The person responsible for a project under this section shall notify the supervisors in writing within 15 days of the action taken as a result of an emergency.

(2) The supervisors shall send one copy of the notice, within 5 days of its receipt, to the department.

(3) A team, called together as described in 26-1514(3), shall make an on-site inspection and individual written reports to the supervisors within 30 days giving their observations and opinions on the emergency project.

(4) If the same or a similar emergency occurs to the same applicant more than once within a 5-year period, the supervisors shall request the team members to include in their reports a determination of the validity of the emergency action and to ascertain the feasibility of a more permanent solution to the emergency.

(5) The supervisors shall determine the feasibility of a more permanent solution and shall recommend, within 30 days, that the person put the solution into effect within a reasonable period of time, as determined by the supervisors. Failure of the person to put that solution into effect is not a violation of this act unless a subsequent emergency action results from this failure.

(6) When a member of the team or the applicant disagrees with the supervisors' recommendation, he may ask that an arbitration panel, as provided in 26-1515, be appointed to hear the dispute and make a final written decision thereon.

History: En. 26-1517 by Sec. 8, Ch. 463, L. 1975; amd. Sec. 2, Ch. 140, L. 1977.

Amendments

The 1977 amendment inserted "of its receipt" in subsection (2); and made minor changes in phraseology, punctuation and style.

26-1518. Modification of plan—cost sharing. If the final decision of the arbitration panel requires modifications or alterations from the original project plan, as approved by the supervisors, then the arbitration panel shall include in its decision any part or per cent of these modifications or alterations that is for the direct benefit of the public and it shall assign any costs to the proper participant.

Any of the involved entities may withdraw or modify required modification of the project within ten (10) days after the decision.

History: En. 26-1518 by Sec. 9, Ch. 463, L. 1975.

26-1519. Application of Flood Plain Management Act. Approval for proposed projects or alternate plans does not relieve the applicant of the responsibility of complying with Title 89, chapter 35, floodway management and regulation where designated flood plains or designated floodways have been established in accordance with that chapter.

History: En. 26-1519 by Sec. 10, Ch. 463, L. 1975.

26-1520. Rules — minimum standards. (1) By July 1, 1975, the board of natural resources and conservation after consultation with the association of conservation districts shall adopt rules setting minimum standards and guidelines for the purposes of this act.

(2) By January 1, 1976, the supervisors of each district shall adopt by resolution after a public hearing rules setting standards and guidelines for projects, and exclusions, within their districts which shall meet or exceed the minimum standards set by the board under subsection (1) of this section.

History: En. 26-1520 by Sec. 11, Ch. 463, L. 1975.

26-1521. Judicial review. Any final action under this act may be appealed within thirty (30) days to the district court.

History: En. 26-1521 by Sec. 12, Ch. 463, L. 1975.

26-1522. Public nuisance. Except for emergency action, a project engaged in by any person without prior approval, as prescribed in this act, is declared a public nuisance and subject to proceedings for immediate abatement.

History: En. 26-1522 by Sec. 13, Ch. 463, L. 1975.

26-1523. Penalty—misdemeanor—restoration. (1) Any person initiating a project without written consent of the supervisors is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500), for each day that person continues to physically alter or modify the stream, and in addition that person shall restore, at the discretion of the court, the damaged stream, as recommended by the team and approved by the supervisors, to as near its prior condition as possible.

(2) Any person or entity who violates the time provisions of this act is guilty of a misdemeanor and upon conviction shall be punished by a fine of five dollars (\$5) per day.

History: En. 26-1523 by Sec. 14, Ch. 463, L. 1975.

Separability Clause

Section 15 of Ch. 463, Laws 1975 read "If a part of this act is invalid, all valid

parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

CHAPTER 16—SHOOTING PRESERVES

26-1601 to 26-1603.

Compiler's Notes

Section 13, Ch. 417, Laws 1977, substituted references to the department of fish

and game in these sections for references to the fish and game commission.

26-1605. Amount of game recoverable under license or permit.

Compiler's Notes

Section 13, Ch. 417, Laws 1977, substituted a reference to the department of fish

and game in this section for "Montana fish and game commission."

26-1607 to 26-1610.

Compiler's Notes

Section 13, Ch. 417, Laws 1977, substituted references to the department of fish

and game in these sections for references to the fish and game commission.

26-1612 to 26-1614.

Compiler's Notes

Section 13, Ch. 417, Laws 1977, substituted references to the department of fish

and game in these sections for references to the state fish and game commission.

CHAPTER 17—IMPORTATION OF SALMONID FISH OR EGGS

Section

- 26-1701. Importation of salmonid fish or eggs unlawful unless certified free of infectious organisms.
 26-1702. Infectious organisms dead—certification unnecessary.
 26-1704. Rules and regulations—personnel.
 26-1705. Quarantine—co-operation with department of highways.

26-1701. Importation of salmonid fish or eggs unlawful unless certified free of infectious organisms. It is unlawful to bring live or dead salmonid fish or eggs into the state of Montana for any purpose unless such importations are shipped direct from the hatchery where reared to destination, and a written certification is provided that the importation or source is free of such infectious organisms as the department may specify. Such certification shall be made in the state of origin by a fish pathologist designated for this purpose by the United States secretary of the interior or by the state fish and game director. Certification of the source may be by inspection of the hatchery of origin conducted annually or at such other times as the state fish and game director may order. A copy of the certification shall accompany each shipment.

History: En. Sec. 1, Ch. 10, L. 1969; amd. Sec. 1, Ch. 37, L. 1974; amd. Sec. 13, Ch. 417, L. 1977.

Title of Act

An act to provide that salmonid fish and eggs imported into Montana be certified free of certain diseases, and providing an effective date.

Amendments

The 1974 amendment substituted "a written certification is provided" near the end of the first sentence for "are accom-

panied by a written certification"; deleted "protozoan myxosoma cerebralis, the causative agent of so-called 'whirling disease,' and such other" near the end of the first sentence; and substituted the last sentence for a sentence reading "If a copy of a current inspection report, certifying that the hatchery of origin is free of protozoan myxosoma cerebralis, and such other infectious organisms as the state fish and game commission may direct, is not attached to each shipment from such hatchery, then each shipment must be inspected and certified."

26-1702. Infectious organisms dead — certification unnecessary. Nothing in this act shall restrict the importation and transportation of dead salmonid fish or eggs when such fish or eggs have been processed or prepared in a manner whereby such infectious organisms as the department may specify, have been killed. Salmon caught and brought directly into North America and transported into Montana for processing or sale, or any salmonid caught wild in North America shall be exempt from the requirement for certification.

History: En. Sec. 2, Ch. 10, L. 1969; amd. Sec. 2, Ch. 37, L. 1974; amd. Sec. 13, Ch. 417, L. 1977.

Amendments

The 1974 amendment deleted "all spores of the protozoan myxosoma cerebralis, and such other" before "infectious organisms" from the first sentence.

26-1703. Repealed.**Repeal**

Section 26-1703 (Sec. 3, Ch. 10, L. 1969), relating to information required in the

certificate for importation of salmonid fish or eggs, was repealed by Sec. 4, Ch. 37, Laws 1974.

26-1704. Rules and regulations—personnel. The department may promulgate such rules and regulations and may employ such personnel for

testing and inspection as are necessary to carry out the provisions of this act.

History: En. Sec. 4, Ch. 10, L. 1969;
amd. Sec. 13, Ch. 417, L. 1977.

26-1705. Quarantine—co-operation with department of highways. The cargo and vehicle involved in a violation of 26-1701, 26-1702, or 26-1704 may, at the option of the department, either be denied the right to proceed further within the state of Montana or be quarantined until inspected by a designated biologist from the department. The department shall inform the department of highways of the provisions regarding importation of salmonid fish and eggs, so that the department of highways may enforce such provisions at ports of entry and checking stations under 32-2421.

History: En. Sec. 5, Ch. 10, L. 1969;
amd. Sec. 3, Ch. 37, L. 1974; amd. Sec. 52,
Ch. 9, L. 1977.

Amendments

The 1974 amendment added the last two sentences.

The 1977 amendment deleted "Any person violating any provision of this act shall be deemed guilty of a misdemeanor and shall be punished as prescribed in section 26-324" at the beginning of the section; substituted "involved in a violation of 26-1701, 26-1702, or 26-1704" in the first sentence for "in violation"; deleted "of fish and game" after the "department" at the end of the first sentence; and made minor changes in phraseology and style.

Separability Clause

Section 53 of Ch. 9, Laws 1977 read "If

a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clauses

Section 4 of Ch. 37, Laws 1974 read "Section 26-1703, R. C. M. 1947, is repealed."

Section 54 of Ch. 9, Laws 1977 read "Sections 26-303.4, 26-307.1, 26-502, 26-909, and 26-922, R. C. M. 1947, are repealed."

Effective Date

Section 6 of Ch. 10, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved January 29, 1969.

CHAPTER 18—ENDANGERED SPECIES

Section

- 26-1801. Citation of act.
- 26-1802. Definitions.
- 26-1803. Legislative policy.
- 26-1804. Investigations by department—regulations—unlawful acts.
- 26-1805. List of endangered species—issuance—review—unlawful to take species on state or federal list.
- 26-1806. Establishment of programs by director—review by governor—taking of species for educational and scientific purpose—other provisions for removal.
- 26-1807. Issuance of regulations.
- 26-1808. Violation of act—misdemeanor—enforcement—disposition of unlawfully captured wildlife.
- 26-1809. Construction of act—severability.

26-1801. Citation of act. This act shall be known and may be cited as "The Nongame and Endangered Species Conservation Act."

History: En. Sec. 1, Ch. 461, L. 1973.

Title of Act

An act to provide for the conservation, management, enhancement and protection

of nongame fish and wildlife and species threatened with extinction; and to provide enforcement authority and penalties for violations.

26-1802. Definitions. As used in this chapter the following definitions apply:

- (1) "Department" means the department of fish and game.
- (2) "Director" means the director of the state department of fish and game.
- (3) "Ecosystem" means a system of living organisms and their environment, each influencing the existence of the other and both necessary for the maintenance of life.
- (4) "Endangered species" means any species or subspecies of wildlife actively threatened with extinction due to any of the following factors:
 - (a) the destruction, drastic modification, or severe curtailment of its habitat, or
 - (b) its overutilization for scientific, commercial or sporting purposes, or
 - (c) the effect on it of disease, pollution, or predation, or
 - (d) other natural or man-made factors affecting its prospects of survival or recruitment within the state, or
 - (e) any combination of the foregoing factors. The department shall have authority to recommend that the legislature include any species or subspecies of fish and wildlife appearing on the United States' list of endangered native fish and wildlife as it appears on the effective date of this chapter (part 17 of title 50 of the Code of Federal Regulations, appendix D) as well as any species or subspecies of fish and wildlife appearing on the United States' list of endangered foreign fish and wildlife (part 17 of title 50 of the Code of Federal Regulations, appendix A), as such list may be modified hereafter.
- (5) "Management" means the collection and application of biological information for the purposes of increasing the number of individuals within species and populations of wildlife up to the optimum carrying capacity of their habitat and maintaining such levels. The term includes the entire range of activities that constitute a modern scientific resource program including, but not limited to, research, census, law enforcement, habitat acquisition and improvement, and education. Also included within the term, when and where appropriate, is the periodic or total protection of species or populations as well as regulated taking.
- (6) "Nongame wildlife" means any wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean or other wild animal not otherwise legally classified by statute or regulation of this state. Animals designated by statute or regulation of this state as predatory in nature are not classified as "nongame wildlife" for purposes of this chapter.
- (7) "Optimum carrying capacity" means that point at which a given habitat can support healthy populations of wildlife species, having regard to the total ecosystem, without diminishing the ability of the habitat to continue that function.
- (8) "Person" means any individual, firm, corporation, association or partnership.
- (9) "Take" means to harass, hunt, capture, or kill or attempt to harass, hunt, capture, or kill wildlife.

(10) "Wildlife" means any wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean or other wild animal or any part, product, egg or offspring or the dead body or parts thereof.

History: En. Sec. 2, Ch. 461, L. 1973; amd. Sec. 12, Ch. 417, L. 1977.

Amendments

The 1977 amendment deleted a former subdivision (3) which read: "'commission' means the fish and game commission"; redesignated subdivisions (4) through (11) as subdivisions (3) through (10); substituted "department" in subdivision (4)(e) for "commission"; and made minor changes in phraseology and punctuation.

Uniform Terminology

Section 13 of Ch. 417, Laws 1977 read "(1) Whenever the words 'Montana fish and game commission', 'state fish and game commission', 'fish and game commission', 'commission', 'members of said commission', or 'chairman of the commission', appear in 26-104, 26-104.4, 26-104.5, 26-104.7, 26-108, 26-109, 26-110, 26-110.3, 26-118, 26-121, 26-123, 26-126, 26-127, 26-128, 26-129, 26-132, 26-133, 26-135, 26-202, 26-202.1, 26-202.4, 26-202.5, 26-202.6, 26-202.7, 26-202.8, 26-204, 26-210, 26-212,

26-212.1, 26-215, 26-220, 26-222, 26-225, 26-226, 26-228, 26-230, 26-233, 26-301, 26-301.1, 26-302, 26-303.5, 26-306, 26-307, 26-307.1, 26-319, 26-320, 26-324, 26-331, 26-332, 26-334, 26-335, 26-344, 26-402, 26-501, 26-501.1, 26-510, 26-813, 26-814, 26-909, 26-911, 26-912, 26-913, 26-914, 26-915, 26-1120, 26-1121, 26-1123, 26-1124, 26-1201, 26-1206, 26-1207, 26-1208, 26-1210, 26-1402, 26-1403, 26-1502, 26-1503, 26-1504, 26-1505, 26-1509, 26-1601, 26-1602, 26-1603, 26-1605, 26-1607, 26-1608, 26-1609, 26-1610, 26-1612, 26-1613, 26-1614, 26-1701, 26-1702, 26-1704, 26-1804, 26-1805, 26-1806, 26-1807, 26-1808, 46-1903, 53-1012, 53-1020, 53-1022, 53-1025, 53-1028, 62-301, 62-304, 62-305, 62-306, 62-308, 62-310, 62-311, 62-314, 62-401, 62-402, 62-403, 68-1402, 69-3502, 69-3505, 69-3517, 69-3518, 75-5205, 89-3405, 89-3407, and 89-3449, R. C. M. 1947, the words 'department of fish and game' or 'department', if it is clear which department is involved, are substituted therefor.

"(2) The code commissioner may make any required grammatical changes necessitated by the replacement of certain words under subsection (1)."

26-1803. Legislative policy. The legislature finds and declares all of the following:

(1) that it is the policy of this state to manage certain nongame wildlife for human enjoyment, for scientific purposes, and to ensure their perpetuation as members of ecosystems;

(2) that species or subspecies of wildlife indigenous to this state which may be found to be endangered within the state should be protected in order to maintain and to the extent possible enhance their numbers;

(3) that the state should assist in the protection of species or subspecies of wildlife which are deemed to be endangered elsewhere by prohibiting the taking, possession, transportation, exportation, processing, sale or offer for sale or shipment within this state of species or subspecies of wildlife unless such actions will assist in preserving or propagating the species or subspecies.

History: En. Sec. 3, Ch. 461, L. 1973.

26-1804. Investigations by department—regulations—unlawful acts.

(1) The department shall conduct investigations on nongame wildlife in order to develop information relating to population, distribution, habitat needs, limiting factors, and other biological and ecological data to determine management measures necessary for their continued ability to sustain themselves successfully. On the basis of such determinations the department shall issue management regulations. Such regulations shall set forth species or subspecies of nongame wildlife which the department deems in need of management pursuant to this section, giving their common and

scientific names by species and subspecies. The department shall conduct ongoing investigations of nongame wildlife. The department may from time to time amend such regulations on the approval of the legislature by adding or deleting therefrom species or subspecies of nongame wildlife.

(2) The department shall by such regulations establish proposed limitations relating to taking, possession, transportation, exportation, processing, sale or offer for sale, or shipment as may be deemed necessary to manage such nongame wildlife. The department may make such changes in the proposed regulations as are consistent with effective management of nongame wildlife as designated by the legislature.

(3) Except as provided in regulations issued by the department, it shall be unlawful for any person to take, possess, transport, export, sell or offer for sale nongame wildlife deemed by the department to be in need of management pursuant to this section. Subject to the same exception, it shall further be unlawful for any common or contract carrier knowingly to transport or receive for shipment nongame wildlife deemed by the department to be in need of management pursuant to this section.

History: En. Sec. 4, Ch. 461, L. 1973;
amd. Sec. 13, Ch. 417, L. 1977.

26-1805. List of endangered species—issuance—review—unlawful to take species on state or federal list. (1) On the basis of investigations on nongame wildlife provided for in section 4 [26-1804] and other available scientific and commercial data, and after consultation with other state wildlife agencies, appropriate federal agencies, and other interested persons and organizations, but not later than one (1) year after the effective date of this act, the department shall recommend to the legislature a list of those species and subspecies of wildlife indigenous to the state which are determined to be endangered within this state, giving their common and scientific names by species and subspecies.

(2) The department shall conduct a review of the state list of endangered species within not more than two (2) years from its effective date and every two (2) years thereafter and the department shall request the legislature to amend the list by such additions or deletions as are deemed appropriate and at such times as are deemed appropriate.

(3) Except as otherwise provided in this chapter, it shall be unlawful for any person to take, possess, transport, export, sell or offer for sale and for any common or contract carrier knowingly to transport or receive for shipment any species or subspecies of wildlife appearing on any of the following lists:

(a) the list of wildlife indigenous to the state determined to be endangered within the state pursuant to subsection (1);

(b) any species or subspecies of fish and wildlife included by the department and appearing on the United States' list of endangered native fish and wildlife as it appears on the effective date of this chapter (part 17 of title 50, Code of Federal Regulations, appendix D); and the United States' list of endangered foreign fish and wildlife (part 17 of title 50, Code of Federal Regulations, appendix A), as such list may be modified hereafter; provided, that any species or subspecies of wildlife appearing on any of

the foregoing lists which enters the state from another state or from a point outside the territorial limits of the United States and which is transported across the state destined for a point beyond the state may be so entered and transported without restriction in accordance with the terms of any federal permit or permit issued under the laws or regulations of another state.

(4) In the event the United States' list of endangered native fish and wildlife is modified subsequent to the effective date of this chapter by additions or deletions, such modifications whether or not involving species or subspecies indigenous to the state may be accepted as binding under subsection (3) if, after the type of scientific determination described in subsection (1), the department recommends and the legislature accepts such modification for the state.

History: En. Sec. 5, Ch. 461, L. 1973;
amd. Sec. 13, Ch. 417, L. 1977.

26-1806. Establishment of programs by director—review by governor—taking of species for educational and scientific purpose—other provisions for removal. (1) The director shall establish such programs, including acquisition of land or aquatic habitat, as are deemed necessary for management of nongame and endangered wildlife. The department shall establish such policies as are necessary to carry out the purpose of this section.

(2) In carrying out programs authorized by this section, the department may enter into agreements with federal agencies, political subdivisions of the state, or with private persons for administration and management of any area established under this section or utilized for management of nongame or endangered wildlife.

(3) The governor shall review other programs administered by him and, to the extent practicable, utilize such programs in furtherance of the purposes of this section. The governor shall also encourage other state and federal agencies to utilize their authorities in furtherance of the purposes of this section.

(4) The director may permit the taking, possession, transportation, exportation or shipment of species or subspecies of wildlife which appear on the state list of endangered species, on the United States' list of endangered native fish and wildlife, as amended and accepted in accordance with subsection (4) of section 5 [26-1805 (4)], or on the United States' list of endangered foreign fish and wildlife, as such list may be modified hereafter, for scientific, zoological, or educational purposes, for propagation in captivity of such wildlife, or for other special purposes.

(5) Upon good cause shown, and where necessary to alleviate damage to property or to protect human health, endangered species may be removed, captured or destroyed but only pursuant to permit issued by the director and, where possible, by or under the supervision of an agent of the department; provided, that endangered species may be removed, captured or destroyed without permit by any person in emergency situations involving an immediate threat to human life. Provisions for removal, capture or destruction of nongame wildlife for the purposes set forth above

shall be set forth in regulations issued by the department pursuant to subsection (1) of section 4 [26-1804(1)].

History: En. Sec. 6, Ch. 461, L. 1973;
amd. Sec. 13, Ch. 417, L. 1977.

26-1807. Issuance of regulations. The department shall issue such regulations as are necessary to carry out the purposes of this act.

History: En. Sec. 7, Ch. 461, L. 1973;
amd. Sec. 13, Ch. 417, L. 1977.

26-1808. Violation of act—misdemeanor—enforcement—disposition of unlawfully captured wildlife. (1) Any person who violates the provisions of this act or whoever fails to procure or violates the terms of any permit issued thereunder shall be guilty of a misdemeanor.

(2) Upon a first conviction for a violation under this chapter, the court may fine the defendant not to exceed two hundred fifty dollars (\$250). Upon a second such conviction, the defendant may be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for any term not to exceed thirty (30) days, or both. Upon subsequent such convictions, the defendant shall be fined not less than five hundred dollars (\$500) or more than one thousand dollars (\$1,000), and in addition may be imprisoned in the county jail for any term not to exceed six (6) months.

(3) Any officer employed and authorized by the director or any peace officer of the state or of any municipality or county within the state shall have authority to enforce the provisions of this act.

(4) Wildlife seized under the provisions of this act shall be held by an officer or agent of the department pending disposition of court proceedings, and thereafter be forfeited to the state for disposition as the director may deem appropriate; provided, that, prior to forfeiture, the director may direct the transfer of wildlife so seized to a qualified zoological, educational, or scientific institution for safekeeping. The department is authorized to issue regulations to implement this subsection.

History: En. Sec. 8, Ch. 461, L. 1973;
amd. Sec. 1, Ch. 359, L. 1975; amd. Sec.
13, Ch. 417, L. 1977.

Amendments

The 1975 amendment inserted subsection (2); and redesignated former subsections (2) and (3) as (3) and (4).

26-1809. Construction of act—severability. (1) None of the provisions of this act shall be construed to apply retroactively or to prohibit importation into the state of wildlife which may be lawfully imported into the United States or lawfully taken or removed from another state or to prohibit entry into the state or possession, transportation, exportation, processing, sale or offer for sale or shipment of any wildlife whose species or subspecies is deemed to be threatened with statewide extinction in this state but not in the state where originally taken if the person engaging therein demonstrates by substantial evidence that such wildlife was lawfully taken or removed from such state; provided, that this subsection shall not be construed to permit the possession, transportation, exportation, processing, sale or offer for sale or shipment within this state of wildlife

on the United States' list of endangered native fish and wildlife, as amended and accepted in accordance with subsection (4) of section 5 [26-1805 (4)], except as permitted in the provision by subsection (3) of section 5 [26-1805 (3)] and subsection (4) of section 6 [26-1806 (4)].

(2) If any provision of this act or the application thereof to any person or circumstance is held invalid, the remainder of this act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

History: En. Sec. 9, Ch. 461, L. 1973.

TITLE 27—FOOD AND DRUGS

Chapter

2. Pesticides, 27-213 to 27-235, 27-239 to 27-245.
3. Labeling of imported meat, 27-318 to 27-320.
4. Supervision of milk industry—state milk control board, 27-402, 27-403, 27-405 to 27-411, 27-413 to 27-414.2, 27-415 to 27-417, 27-421 to 27-424, 27-426, 27-430.
5. Oleomargarine, Repealed—Section 9, Chapter 99, Laws of 1953; Section 1, Chapter 286, Laws of 1973.
6. Food service establishments, markets and manufacturers, 27-612, 27-614, 27-615, 27-615.2.
7. Food, Drug and Cosmetic Act, 27-702, 27-703, 27-706, 27-707, 27-721, 27-722.
8. Flour and bread, 27-801 to 27-805.
9. Dispensing of drugs by practitioners, 27-901 to 27-906.

CHAPTER 1—DAIRY CATTLE AND SLAUGHTERHOUSES

27-106. (2583) Repealed.

Repeal

Section 27-106 (Sec. 6, Ch. 130, L. 1911), relating to the tuberculin test of dairy

cattle by the state veterinarian, was repealed by Sec. 201, Ch. 310, Laws of 1974.

CHAPTER 2—PESTICIDES

Section

- 27-213. Short title.
- 27-214. Declaration of purpose.
- 27-215. Administration.
- 27-216. Definitions.
- 27-217. Registration.
- 27-218. Prohibited acts.
- 27-219. Sampling and analysis.
- 27-220. Embargo.
- 27-221. Commercial applicator.
- 27-222. Application for applicator's license.
- 27-223. Commercial operator.
- 27-224. Applicators and operators examination.
- 27-225. Dealers.
- 27-226. Dealers examination.
- 27-227. Retail noncommercial sale of pesticides.
- 27-228. Farm applicators.
- 27-229. Licensing nonresidents.
- 27-230. Revocation of licenses and permits.
- 27-231. Government agencies.
- 27-232. Liability.
- 27-233. Report of loss or damage—effect of failure to report.
- 27-234. Rules and regulations.
- 27-235. Administrative procedures.
- 27-239. Public information.
- 27-240. Advisory council.
- 27-241. Educational programs.
- 27-242. Cooperation with other agencies.
- 27-243. Enforcement.
- 27-244. Discarding pesticides.
- 27-245. Violation.

27-201 to 27-212. Repealed.**Repeal**

Sections 27-201 to 27-212 (Secs. 1 to 12, Ch. 263, L. 1947; Secs. 1 to 8, Ch. 239, L. 1953; Sec. 1, Ch. 218, L. 1965; Sec. 220,

Ch. 197, L. 1967), relating to insecticides, fungicides, rodenticides, herbicides and other economic poisons, were repealed by Sec. 35, Ch. 403, Laws 1971.

27-213. Short title. This act may be cited as the Montana Pesticides Act.

History: En. Sec. 1, Ch. 403, L. 1971.

Title of Act

An act controlling the distribution, sale, application, disposal and transportation of pesticides and devices; creating a tem-

porary advisory committee; providing registration of pesticides and licensing of applicators; providing procedure for appeals; providing penalties and an effective date.

27-214. Declaration of purpose. The control of pesticides and their use is essential for the protection of man and his environment. Pesticides are currently considered valuable and necessary to provide sufficient quantity of quality foods and for the protection of humans from vector-borne diseases. However, the protection of man and his essential needs—water, air, food, animals, vegetation, pollinating insects, and shelter from pesticides which are potentially dangerous—is in the public interest now and in the future. Therefore, it is deemed necessary to provide for the control of pesticides.

History: En. Sec. 2, Ch. 403, L. 1971.

27-215. Administration. This act shall be administered by the Montana state department of agriculture.

History: En. Sec. 3, Ch. 403, L. 1971.

27-216. Definitions. Unless the context requires otherwise, in this act:

(1) "Active ingredient" means:

(a) in the case of a pesticide other than a plant regulator, defoliant, or desiccant, an ingredient which will prevent, destroy, repel, alter life processes, or mitigate insects, nematodes, fungi, rodents, weeds, or other pests;

(b) in the case of a plant regulator, an ingredient which acts upon the physiology to accelerate or retard the rate of growth or rate of maturation or otherwise alter the normal processes of ornamental or crop plants or their produce;

(c) in the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant;

(d) in the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue.

(2) "Adulterated" applies to a pesticide if its strength or purity falls below the professed standard or quality as expressed on labeling or under which it is sold, or if any substance has been substituted wholly or in part for the pesticide, or if any valuable constituent of the pesticide has been wholly or in part abstracted.

(3) "Antidote" means the most practical immediate treatment in case of poisoning and includes first-aid treatment.

(4) "Applicator" means a person who applies pesticides by any method.

(5) "Commercial applicator" means a person who by contract or for hire applies by aerial, ground, or hand equipment pesticides to land, plants, seed, animals, waters, structures, or vehicles.

(6) "Commercial operator" means a person who applies pesticides under the supervision of a commercial applicator.

(7) "Farm applicator" means a person applying pesticides to his own crops or land.

(8) "Public utility applicator" means a person applying pesticides to land and structures owned or leased by a public utility.

(9) "Beneficial insects" means those insects which, in the course of their life cycle, carry, transmit, or spread pollen to and from vegetation, act as parasites and predators on other insects, or are otherwise beneficial.

(10) "Crop" means a food intended for human or animal consumption or a fiber product.

(11) "Dealer" means a person who sells, wholesales, offers, or exposes for sale, exchanges, barter, or gives away within this state any pesticide except those pesticides which are to be used for home, yard, garden, home orchard, shade trees, ornamental trees, bushes, and lawn.

(12) "Defoliant" means a substance or mixture of substances for causing the leaves or foliage to drop from a plant, with or without causing abscission.

(13) "Desiccant" means a substance or mixture of substances for artificially accelerating the drying of plant tissue.

(14) "Device" means any instrument or contrivance intended for destroying, controlling, repelling, or mitigating pests but not equipment used for the application of pesticides.

(15) "Environment" means the soil, air, water, plants, and animals.

(16) "Equipment" means equipment used in the actual application of pesticides, including aircraft, ground sprayers and dusters, hand-held applicators, and water surface equipment.

(17) "Fungi" means all nonchlorophyll-bearing thallophytes (all non-chlorophyll-bearing plants of a lower order than mosses and liverworts) as, for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those resident on or in living man or other animals.

(18) "Fungicide" means a substance or mixture of substances for preventing, destroying, repelling, or mitigating any fungus.

(19) "Herbicide" means a substance or mixture of substances for preventing, destroying, repelling, or mitigating any weed.

(20) "Inert ingredient" means an ingredient which is not an active ingredient.

(21) "Ingredient statement" means either:

(a) a statement of the chemical name and common name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the pesticide; or

(b) a statement of the chemical name and common name of each active ingredient, together with the name of each and total percentage of the inert ingredients, if any, in the pesticide. However, subsection (21)(a) of this section applies if the preparation is highly toxic to man, determined as provided in 27-234, and if the pesticide contains arsenic in any form, the ingredient statement shall also include a statement of the percentage of total and water-soluble arsenic, each calculated as elemental arsenic.

(22) "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, winged and wingless forms, such as beetles, bugs, wasps, flies, and keds, and to other classes of arthropods whose members are wingless and usually have more than six legs, such as spiders, mites, ticks, centipedes, and wood lice.

(23) "Insecticide" means any substance or mixture of substances for preventing, destroying, repelling, or mitigating any insects present in any environment.

(24) "Label" means the written, printed, or graphic matter on or attached to the pesticide or device, or to its immediate container, and any outside container or wrapper of any retail package of the pesticide or device.

(25) "Labeling" means all labels and other written, printed, or graphic matter:

- (a) upon the pesticide or device or any of its containers or wrappers;
- (b) accompanying the pesticide or device at any time;
- (c) to which reference is made on the label or in literature accompanying the pesticide or device, except when accurate, nonmisleading reference is made to current official publications of the United States environmental protection agency; departments of agriculture, interior, or health, education, and welfare; state experiment stations; state agricultural colleges; or other similar federal institutions or official agencies of this state or other states authorized by law to conduct research in the field of pesticides.

(26) "Misbranded" applies:

- (a) to a pesticide or device if its labeling bears any statement, design, or graphic representation relative to its ingredients which is false or misleading.
- (b) to a pesticide if:
 - (i) it is an imitation of or is offered for sale under the name of another pesticide;
 - (ii) its labeling bears any reference to registration under this act;
 - (iii) the labeling accompanying it does not contain instructions for use necessary and, if complied with, adequate for the protection of the public;
 - (iv) the label does not contain a warning or caution statement necessary and, if complied with, adequate to prevent injury to living man or undue hazard to the environment;

(v) the label of the retail package which is presented or displayed under customary conditions of purchase does not bear an ingredient statement on that part of the immediate container and on the outside or on a wrapper through which the ingredient statement on the immediate container cannot be clearly read;

(vi) any word, statement, or other information required to appear on the labeling is not prominently placed on the labeling with a conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in terms rendering it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(vii) in the case of an insecticide, nematocide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized practice, it is injurious to living men or other vertebrate animals or vegetation, except weeds, to which it is applied, or to the person applying the pesticide;

(viii) in the case of a plant regulator, defoliant, or desiccant, when used as directed, it is injurious to man or other vertebrate animals or vegetation to which it is applied, or to the person applying the pesticide. Physical or physiological effects on plants or parts of plants are not injurious when this is the purpose for which the plant regulator, defoliant, or desiccant is applied in accordance with the label claims and recommendations.

(27) "Nematocide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating nematodes.

(28) "Nematodes", "nemas", or "eelworms" means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or sac-like bodies covered with cuticle, and inhabiting soil, water, animals, plants, or plant parts.

(29) "Person" means any natural person, individual, firm, partnership, association, corporation, company, joint-stock association, body politic, or organized group of persons whether incorporated or not, and any trustee, receiver, assignee, or similar representative.

(30) "Pest" includes any insect, rodent, nematode, snail, slug, weed, and any form of plant or animal life or virus, except virus on or in living man or other animal, which is normally considered a pest or which the department declares a pest.

(31) "Pesticide" means any:

(a) substance or mixture of substances, including any living organism or any product derived from a living organism, intended for preventing, destroying, controlling, repelling, altering life processes, or mitigating any insects, rodents, nematodes, fungi, weeds, and other forms of plant or animal life or viruses, except viruses on or in living man or other animals, that may infect, or be detrimental to persons, vegetation, crops, animals, structures, or households or be present in any environment or which the department declares a pest;

(b) substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and

(c) other substances intended for that use named by the department by a rule adopted by it.

(32) "Plant regulator" means any substance or mixture of substances affecting the rate of growth or rate of maturation or for otherwise altering physiological condition of plants, but does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

(33) "Registrant" means the person registering any pesticide or device under the provisions of this act.

(34) "Restricted use pesticide" means any pesticide, including highly toxic pesticides, which the department of agriculture has found and determined, subsequent to a hearing, to be injurious when used in accordance with registration, label, directions, and cautions to persons, beneficial insects, animals, crops, or the environment other than the pests it is intended to prevent, destroy, control, or mitigate.

(35) "Retailer" means any person who sells, offers, or exposes for sale, exchanges, barter, or gives away within this state any pesticide for home, yard, lawn, and garden use, in quantities or concentrations as determined by the department of agriculture.

(36) "Weed" means any plant or part of the plant which grows where not wanted.

History: En. Sec. 4, Ch. 403, L. 1971; amd. Sec. 1, Ch. 447, L. 1973; amd. Sec. 120, Ch. 218, L. 1974; amd. Sec. 1, Ch. 462, L. 1977.

Amendments

The 1973 amendment inserted "seed" in subdivision (4)(a) (now subdivision (5)); and inserted subdivision (4)(e) (now subdivision (8)).

The 1974 amendment deleted "in this state" after "any person who" in subdivision (5); deleted definitions of "Commissioner," "Department of agriculture,"

"Department of health," "Official sample," and "Rodenticide"; substituted "department" for "commissioner" in subdivision (30); substituted "by a rule adopted by it" for "by regulation after calling a public hearing for such purpose" at the end of subdivision (31)(c); and made minor changes in phraseology, punctuation and style.

The 1977 amendment substituted "arthropods" in subdivision (22) for "anthropods"; and made minor changes in punctuation and style.

27-217. Registration. (1) Every pesticide distributed, sold, or offered for sale within this state or delivered for transportation or transported in intrastate commerce or between points within this state, shall be registered with the department of agriculture. The registration shall be renewed annually by the manufacturer, formulator, or distributor of the pesticide. The department of agriculture shall register all approved pesticides and those registered are subject to registration fees and all other provisions of this act. All registrations of pesticides expire on December 31 following the date of issuance, unless otherwise terminated.

(2) The applicant for registration shall file with the department of agriculture a statement including:

(a) the name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the registrant;

(b) a complete copy of the label of the pesticide, the United States environmental protection agency registration number if the pesticide is so registered, and a statement of all claims to be made for it, including directions for use;

(c) the trade and chemical name of the pesticide;

(d) if requested by the department of agriculture, a full description of tests made and the results upon which the claims are based. In the case of renewal of registration, a statement shall be required only with respect to information which is different from that furnished when the pesticide was registered or last reregistered.

(3) Any pesticide imported into this state which is subject to the provisions of any federal act providing for the registration of pesticides and has been registered under the provisions of a federal act shall be registered in the state. However, the state may restrict the use and application of the pesticide by type of applicator, time, and place and may establish special registrations of pesticides as outlined in subsection (8) of this section and 27-234(3). The annual registration fee must also be paid, and registration information required by the department of agriculture must be provided.

(4) The applicant shall pay an annual fee of \$10 for each pesticide registered. A registration fee is not required to register an experimental use permit. Fees collected shall be deposited in the state treasury to the credit of the general fund.

(5) The department of agriculture may require the submission of the complete formula and certified analytical standards of any pesticide. If it appears to the department of agriculture that the composition of the article warrants the proposed claims for it and if the article and its labeling and other material required to be submitted comply with the requirements of 27-218, it shall register the article.

(6) If it does not appear to the department of agriculture that the article warrants the proposed claims for it or if the article and its labeling and other material required to be submitted do not comply with this chapter, it shall notify the applicant of the manner in which the articles, labeling, or other material required to be submitted fails to comply with the act so as to afford the applicant an opportunity to make the necessary corrections. If the applicant does not make the corrections upon receipt of the notice, the department of agriculture may refuse to register the article. The department of agriculture may suspend or cancel the registration of a pesticide whenever it does not appear that the article or its labeling comply with this act. When an application for registration is refused or the department of agriculture proposes to suspend or cancel a registration, the registrant may appeal the department's decision.

(7) Registration is not required in the case of a pesticide shipped from one plant in this state to another plant in this state by the same person.

(8) (a) The departments of health and environmental sciences, agriculture, and fish and game shall review all applications for registration of an experimental use permit or a registration for special local needs.

The departments shall utilize the same requirements and standards for reviewing registrations as established by the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, and regulations adopted thereunder. The department of agriculture shall provide the departments of health and environmental sciences and fish and game with a complete copy of the application, related correspondence, and a statement of the department of agriculture's proposed action on the application. The departments of health and environmental sciences and fish and game shall approve or disapprove the application within 10 days after the receipt of the application. If the departments of health and environmental sciences, agriculture, and fish and game are in agreement with the proposed registration, the department of agriculture shall issue the registration.

(b) The department of agriculture shall establish a time and place for an interagency conference for the purposes of resolving the registration of any pesticide or device. If two of the departments approve the proposed registration, the department of agriculture shall issue the registration.

(c) The registrant applying for registration shall be notified as to proposed changes in registration. If the departments cannot resolve the proposed registration following the interagency conference, the registrant may request a joint administrative hearing before the departments of agriculture, health and environmental sciences, and fish and game.

(d) Following the interagency conference, and if requested, the administrative hearing, if the proposed registration of a pesticide or device has not been resolved, the department of agriculture shall appoint an advisory council as outlined in 27-240 to resolve by majority vote the registration of any pesticide. The advisory council's recommendations on the registration shall be accepted by the departments and implemented by the department of agriculture.

History: En. Sec. 5, Ch. 403, L. 1971; amd. Sec. 121, Ch. 218, L. 1974; amd. Sec. 2, Ch. 462, L. 1977.

Amendments

The 1974 amendment substituted "chapter" for "act" in the first sentence of subsection (6); deleted "and make appropriate recommendations to the commissioner" at the end of subsection (7); substituted "department of health and environmental sciences" for "department of health" throughout subdivisions (9)(a) and (9)(c); substituted "department of agriculture" for "commissioner" in subdivision (9)(b) and "department" for "commissioner" in subdivision (9)(d); substituted "departments" for "agencies" in subdivisions (9)(c) and (9)(d); substituted "advisory council" for "advisory committee" twice in subdivision (9)(d); and made minor changes in phraseology, punctuation and style.

The 1977 amendment inserted "or distributor" in the second sentence of subsection (1); inserted the second sentence

of subsection (4); deleted "in accordance with the procedures specified by the department of agriculture" after "The department of agriculture" at the beginning of the next to last sentence of subsection (6); substituted "the department's decision" at the end of subsection (6) for "to the department of agriculture as provided for in section 27-236"; deleted former subsection (7) which read "The department of agriculture shall review all registered pesticides at least every two (2) years"; redesignated former subsections (8) and (9) as (7) and (8); substituted "an experimental use permit or a registration for special local needs" at the end of the first sentence of subdivision (8)(a) for "a pesticide or device submitted to the department of agriculture"; inserted the second sentence of subdivision (8)(a); increased the time for acting on applications from 3 days to 10 days in the fourth sentence of subdivision (8)(a); and made minor changes in phraseology, punctuation and style.

27-218. Prohibited acts. (1) It shall be unlawful for any person to distribute, sell, or offer for sale within this state or deliver for transportation or transport in intrastate commerce between points within this state any of the following:

(a) Any pesticide which has not been registered pursuant to the provisions of section 5 [27-217] of this act, or any pesticide if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration, or if the composition of a pesticide differs from its composition as represented in connection with its registration, or if registration or reregistration has been refused, revoked, cancelled or suspended. The department of agriculture may allow a change in the labeling or formula of a pesticide within a registration period without requiring reregistration of the product when such change does not adversely affect the product for its intended use and if proper application therefor is made.

(b) Any pesticide, unless it is in the registrant's or the manufacturer's unbroken immediate container, and there is affixed to such container and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing:

(i) The name and address of the manufacturer, registrant, or person for whom manufactured.

(ii) The trade and chemical name, brand, or trademark under which said article is sold.

(iii) The net weight or measure of the content; however, subject to such reasonable variations as the department of agriculture may permit.

(c) Any pesticide which contains any substance or substances in quantities highly toxic to man, determined as provided in section 22 [27-234] of this act, unless the label shall bear, in addition to any other matter required by this act:

(i) The skull and crossbones.

(ii) The word "poison" prominently in red on a background of distinctly contrasting color.

(iii) A statement of an antidote for the pesticide.

(d) The pesticides commonly known as standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, and barium fluosilicate unless they have been distinctly colored or discolored as provided by regulations issued in accordance with this act, or any other white powder pesticide which the department of agriculture, after investigation of and after public hearing on the necessity for such action for the protection of the public health and the environment and the feasibility of such coloration or discoloration, shall, by regulations, require to be distinctly colored or discolored, unless it has been so colored or discolored. The department of agriculture may exempt any pesticide to the extent that it is intended for a particular use from the coloring or discoloring required or authorized by this section if it determines that such coloring or discoloring for such

use is not necessary for the protection of the public health and the environment.

(e) Any pesticide which is adulterated or misbranded, or any device which is misbranded.

(2) It shall be unlawful for any person to:

(a) Detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this act or regulations promulgated hereunder, or to add any substance to, or take any substance from, a pesticide in a manner that may defeat the purpose of this act.

(b) Uses for his own advantage or to reveal, other than to the department of agriculture or proper officials or employees of the state or the courts of this state in response to a subpoena, to physicians, or to veterinarians, or in emergencies to pharmacists and other qualified persons, for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of section 5 [27-217] of this act.

History: En. Sec. 6, Ch. 403, L. 1971.

27-219. Sampling and analysis. (1) The department of agriculture shall have the authority to sample, inspect, make analysis of pesticides or devices distributed within this state at such time and place and to such extent as it may deem necessary to determine whether such pesticides or devices are in compliance with the provisions of this act. The department of agriculture is authorized with a warrant or the consent of the inhabitant or owner to enter upon any public or private premises including any vehicle of transport in order to have access to pesticides or devices and to records relating to their distribution.

(2) The methods of sampling and analysis shall be those adopted by the department of agriculture from sources such as the Journal of the Association of Official Analytical Chemists.

History: En. Sec. 7, Ch. 403, L. 1971.

27-220. Embargo. (1) Whenever a duly authorized agent of the department of agriculture finds or has probable cause to believe that any pesticide or device is adulterated or misbranded, has not been registered under the provisions of 27-217(5), fails to bear on its label the information required by this act, or is a white powder pesticide and is not colored as required under this act, he shall affix to such article a tag or other appropriate marking giving notice thereof and that the article has been detained or embargoed and warning all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by such agent or the court. It is unlawful for any person to remove or dispose of such detained or embargoed article by sale or otherwise, without such permission, or to remove or alter the tag or marking.

(2) When an article detained or embargoed under subsection (1) has been found by such agent to be in violation, if after 30 days the violation has not been resolved, he may petition the district court in whose jurisdiction the article is detained or embargoed for a condemnation of such article.

When such agent has found that an article so detained or embargoed is not adulterated or misbranded, he shall remove the tag or other marking.

(3) If the court finds that a detained or embargoed article is in violation of the act or rules adopted thereunder, such article shall after entry of the decree be destroyed at the expense of the claimant thereof, under the supervision of such agent, and all court costs and fees and storage and other proper expenses shall be assessed against the claimant of such pesticide or device or his agent, provided that when the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after such costs, fees, and expenses have been paid and a good and sufficient bond has been executed, conditioned upon the proper labeling or processing of such pesticide or device, may by order direct that such article be delivered to the claimant thereof for such labeling or processing under the supervision of an agent of the department of agriculture. The expense of such supervision shall be paid by claimant. The article shall be returned to the claimant of the pesticide or device on the representation to the court by the department of agriculture that the article is no longer in violation of this act, and that the expenses of such supervision have been paid.

History: En. Sec. 8, Ch. 403, L. 1971; amd. Sec. 28, Ch. 13, L. 1977; amd. Sec. 3, Ch. 462, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 13 and once by Ch. 462. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 13, Laws of 1977, deleted the subdivision designations in subsection (1); substituted "notice thereof and that the article" near the middle of the first sentence of subsection (1) for "notice that such pesticide or device is, or is suspected of being adulterated or misbranded, not

registered, fails to bear the required information on the label, is a white powder pesticide and not colored as required, and"; and made minor changes in phraseology, punctuation and style.

Chapter 462, Laws of 1977, substituted "27-217(5)" in subsection (1) for "section 5"; substituted "notice thereof and that such article" near the middle of subsection (1) for "notice that such pesticide or device is, or is suspected of being adulterated or misbranded, not registered, fails to bear the required information on the label, is a white powder pesticide and not colored as required"; substituted "the act or rules adopted thereunder" near the beginning of subsection (3) for "section 8(1)"; and made minor changes in phraseology, punctuation and style.

27-221. Commercial applicator. (1) It shall be unlawful for any person to engage in the business of applying pesticides for another without a pesticide applicator's license obtained from the department of agriculture. The application shall be accompanied by a fee of \$10. Applicators applying for a dealer license under this act shall be required to pay only a \$5 licensing fee for the dealer license. The provisions of this section shall not apply to any person employed only to operate any equipment used for the application of any pesticide, and in which the person has no financial interest or other control over such apparatus other than its day-to-day mechanical operation for the purpose of applying any pesticide.

(2) Public utility applicators shall be licensed in the same manner as commercial applicators, provided that public utility operators working under public utility applicators are not required to be licensed except as provided for under 27-223.

(3) Veterinarians licensed as provided in 66-2204 shall not be required to be licensed to apply nonrestricted pesticides, provided that these veterinarians shall register with the department of agriculture each year; provided further that the veterinarians shall be required to meet all other requirements and rules of the Montana Pesticides Act. The department shall consider the professional licensing requirements for veterinarians when adopting rules.

History: En. Sec. 9, Ch. 403, L. 1971; amd. Sec. 2, Ch. 447, L. 1973; amd. Sec. 4, Ch. 462, L. 1977.

Amendments

The 1973 amendment designated the language of the former section as subsection (1); inserted the third sentence in subsection (1); and added subsections (2) and (3).

The 1977 amendment deleted "or retailer" after "dealer" two places in the third sentence of subsection (1); inserted "nonrestricted" before "pesticides" in the first sentence of subsection (3); substituted "rules" in each sentence of subsection (3) for "regulations"; and made minor changes in phraseology and style.

27-222. Application for applicator's license. (1) Application for a pesticide applicator's license provided for in 27-221 shall be made annually to the department of agriculture before applying pesticides in any calendar year. Provided that pesticide applicators applying for renewal of license shall do so on or before May 1 of that calendar year. Any applicator applying for renewal of license after May 1 shall be assessed a \$10 late licensing fee.

(2) If the application is made for a license to engage in aerial application of pesticides, the applicant shall first meet all of the requirements of the federal aviation agency and the department of community affairs to operate the equipment described in the application.

History: En. Sec. 10, Ch. 403, L. 1971; amd. Sec. 122, Ch. 218, L. 1974; amd. Sec. 33, Ch. 213, L. 1975; amd. Sec. 5, Ch. 462, L. 1977.

Amendments

The 1974 amendment substituted "department of intergovernmental relations" for "aeronautics commission of this state" in subsection (2); and made minor changes in phraseology and punctuation.

The 1975 amendment substituted "department of community affairs" for "department of intergovernmental relations" in subsection (2).

The 1977 amendment added the last two sentences to subsection (1); and made minor changes in phraseology, punctuation and style.

27-223. Commercial operator. The department of agriculture may establish procedures for controlling pesticide operators including necessary fees by regulation.

History: En. Sec. 11, Ch. 403, L. 1971.

27-224. Applicators and operators examination. (1) The department of agriculture shall publish and distribute or have available upon request such information as may be helpful to persons engaged in the application of pesticides, including information that may be required or which may appear upon any examination given to applicators and operators by the department of agriculture.

(2) The department of agriculture shall require an applicant for a license to show upon written examination that he possesses adequate

knowledge concerning the proper use and application of pesticides under the classification for which he has applied. Provided that the applicator and operator may not be required to take a re-examination, upon renewal of licensing.

History: En. Sec. 12, Ch. 403, L. 1971.

27-225. Dealers. (1) It is unlawful for a dealer to sell, deliver, or have delivered within this state any pesticide without first procuring a license from the department of agriculture for each calendar year or portion thereof. A separate dealer's license and fee shall be required for each location or outlet from which pesticides are distributed, sold, held for sale, or offered for sale. Pesticide fieldmen or salesmen employed directly out of the same location or outlet and under a licensed dealer, shall not be required to obtain a license.

(2) The dealer shall furnish the department of agriculture the names and addresses of its fieldmen and salesmen selling pesticides within the state. The application for a license shall be accompanied by a fee of \$10. Dealers applying for renewal of license shall do so on or before May 1 of that calendar year. Any dealer applying for renewal of license after May 1 shall be assessed a \$10 late licensing fee.

(3) The dealer shall require the purchaser of any restricted pesticide to exhibit his license or permit issued under authority of this act before completing a sale.

(4) Dealers may make one application for two annual licenses if the application is accompanied by a \$10 licensing fee for each year of the state biennium.

(5) Pharmacists and veterinarians, licensed as provided for in 66-1506, 66-1507, and 66-2204, and certified pharmacies licensed under 66-1508(b), shall not be required to be licensed to sell pesticides, provided that the certified pharmacies and veterinarians shall register with the department of agriculture each year. However, the certified pharmacies and veterinarians shall be required to meet all other requirements concerning the commercial sale of pesticides. The department shall take into account the professional licensing requirements of pharmacists, certified pharmacies, and veterinarians when adopting rules.

History: En. Sec. 13, Ch. 403, L. 1971; amd. Sec. 3, Ch. 447, L. 1973; amd. Sec. 6, Ch. 462, L. 1977.

Amendments

The 1973 amendment inserted the second sentence in subsection (1); substituted the third sentence of subsection (1) for a sentence reading, "Pesticide fieldmen or salesmen not under supervision of a licensed dealer shall be licensed as a dealer"; and added subsection (5).

The 1977 amendment added the last two sentences of subsection (2); substituted subsection (4) for "Licensed dealers shall not be required to obtain a retail noncommercial license or pay the fee; however, all other provisions of section 15 shall apply"; substituted "rules" in the last sentence of subsection (5) for "regulations"; and made minor changes in phraseology, punctuation and style.

27-226. Dealers examination. Each applicant applying for a dealer's license and/or his employee(s) in charge of pesticide sales shall be required to pass a reasonable examination administered by the department

of agriculture. Dealers applying for relicensing may not be required to take an additional examination if they have met the department of agriculture's requirements.

History: En. Sec. 14, Ch. 403, L. 1971.

27-227. Retail noncommercial sale of pesticides. The department of agriculture is authorized to designate the pesticides that may be sold in this state at retail for home, yard, garden, and lawn use. Only pesticides so designated may be sold at retail. The department of agriculture may also limit the retail sale of such designated pesticides to quantities up to a specific number of pounds or gallons and of such concentrations as would be sublethal to humans and animals if small amounts thereof were accidentally swallowed, inhaled, sprayed, or dusted on the skin.

History: En. Sec. 15, Ch. 403, L. 1971; amd. Sec. 4, Ch. 447, L. 1973; amd. Sec. 7, Ch. 462, L. 1977.

tail pesticide outlets; and made minor changes in style and phraseology.

Effective Date

Amendments

The 1973 amendment added the proviso to the second sentence of subsection (2).

The 1977 amendment deleted a subsection (2) which provided for licensing re-

Section 5 of Ch. 447, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 23, 1973.

27-228. Farm applicators. (1) Farm applicators shall be required to obtain a certificate or special use permit prior to purchasing and using any pesticide designated by the department as a restricted use pesticide. The certificate, to be issued for 5 calendar years, must be renewed annually by the department or its authorized representative. The 5-year certification period shall commence on January 1, 1978. Provided that the time period from October 21, 1977, through December 31, 1977, shall be considered as part of the January 1, 1978, 5-year certification period.

(2) Restricted pesticides may not be utilized by farm applicators or their employees except for the purpose of producing or protecting any agricultural commodity on property owned, leased, or rented, or as provided in (6) of this section.

(3) Farm applicators shall qualify for the certificate or permit by either passing a written examination or attending a training course approved by the department with or without an ungraded quiz. The examination or course shall include practical knowledge as the ability to:

(a) recognize common pests to be controlled and damage caused by them;

(b) read and understand the label and labeling information including the common name of the pesticide(s) applied; pest(s) to be controlled; timing and methods of application; safety precautions; any preharvest or reentry restrictions; and any specific disposal procedures.

(c) apply pesticides in accordance with label instructions and warnings, including the ability to prepare the proper concentration of pesticides to be used under particular circumstances taking into account such factors as area to be covered, speed at which application equipment will be driven, and the quantity dispersed in a given period of operation;

(d) recognize local environmental situations that must be considered during application to avoid contamination; and

(e) recognize poisoning symptoms and procedures to follow in case of a pesticide accident.

(4) The department may require farm applicators to attend a mandatory training session and pass a written examination for those restricted pesticides which are extremely toxic or for which an effective antidote is not available. The department may require farm applicators handling these pesticides to maintain use records.

(5) Farm applicators having verified reading disabilities may become certified to use up to two restricted use pesticides by passing a specific oral examination on the particular pesticide(s) if the applicator documents that a certified applicator in the immediate vicinity can advise him.

(6) Provisions of this act relating to licensing of farm applicators shall not apply to any farm applicator applying nonrestricted pesticides on his own land or on lands of his neighbor's; provided that he:

(a) operates farm property and operates and maintains pesticide application equipment primarily for his own use;

(b) is not regularly engaged in the business of applying pesticides for hire and does not publicly hold himself out as a pesticide applicator;

(c) operates his pesticide application equipment only in the vicinity of his own property and for the accommodation of his immediate neighbors.

History: En. Sec. 16, Ch. 403, L. 1971; amd. Sec. 8, Ch. 462, L. 1977.

Amendments

The 1977 amendment substituted subsections (1) through (5) for "(1) The department of agriculture shall establish which are restricted use pesticides for agricultural use. Pesticides so restricted cannot be utilized by the farm applicator on commercial crops, land, or livestock, except as provided in (2) below. (2) Farm applicators desiring to apply re-

stricted use pesticides on commercial crops, land, or livestock may obtain an annual special use permit from the department of agriculture. The department of agriculture shall require the applicant to show upon written examination that he possesses adequate knowledge to use and apply restricted agricultural pesticides and the justification for their use on commercial crops, land or livestock"; designated the remainder of the former section as subsection (6); and made minor changes in phraseology and punctuation.

27-229. Licensing nonresidents. Any nonresident applying for a license under this act to operate in the state of Montana shall file a written power of attorney designating the secretary of state as the agent of such nonresident upon whom service of process may be had in the event of any suit against said nonresident person, and such power of attorney shall be so prepared and in such form as to render effective the jurisdiction of the courts of the state of Montana over such nonresident applicant; provided, however, that any such nonresident who has a duly appointed resident agent upon whom process may be serviced as provided by law, shall not be required to designate the secretary of state as such agent. The secretary of state shall be allowed such fees as provided by law for designating resident agents. The department of agriculture shall be furnished with a copy of such designation of the secretary of state or of a resident agent, such copy to be duly certified by the secretary of state.

History: En. Sec. 17, Ch. 403, L. 1971.

27-230. Revocation of licenses and permits. (1) The department of agriculture shall establish the policy and procedures on the revocation of licenses or permits. The department of agriculture may refuse to grant, renew, or may revoke a license or permit, as the case may require, when the department of agriculture is satisfied that the licensee or holder of a permit is not qualified to sell, use, or apply pesticides under the conditions in the locality in which he operates or has operated, or that he has committed any of the following acts, each of which is declared to be a violation of this act:

- (a) made false or fraudulent claims or recommendations through any media misrepresenting the effect of materials or methods to be utilized;
- (b) applied unapproved or illegal materials;
- (c) operated in a faulty, careless, or negligent manner;
- (d) operated faulty or unsafe equipment;
- (e) refused or neglected to comply with the provisions of this act, the rules adopted hereunder, or any lawful order of the department of agriculture;
- (f) refused or neglected to keep and maintain the records required by this act or to make reports when and as required;
- (g) made false or fraudulent records or reports;
- (h) operated equipment for the commercial application of a pesticide without having a license or permit;
- (i) used fraud or misrepresentation in making an application for a license or permit or renewal of a license or permit;
- (j) used or applied a registered pesticide inconsistent with its labeling or the label or the department restrictions on the use of that pesticide.

(2) Decisions of the department of agriculture relating to the issuing of licenses or permits may be appealed.

History: En. Sec. 18, Ch. 403, L. 1971; amd. Sec. 9, Ch. 462, L. 1977.

ommendations" in subdivision (1)(a); added subdivision (1)(j); and made minor changes in style, phraseology and punctuation.

Amendments

The 1977 amendment inserted "or rec-

27-231. Government agencies. (1) All state agencies, municipal corporations, or any other governmental agency shall be subject to the provisions of this act and rules adopted thereunder concerning the application or sale of pesticides. Applicators and operators applying pesticides and dealers selling pesticides for agencies, municipal corporations, or any governmental agencies shall be subject to the provisions of 27-221, 27-222, 27-223, 27-224, 27-225, and 27-226 and the department of agriculture shall issue a limited commercial applicator's, operator's, or dealer's license without a fee which shall be valid only when such applicators, operators, and dealers are applying or selling pesticides for such agencies. Provided, that the jurisdictional health officer, state veterinarian, their duly authorized representatives, or governmental research personnel are exempt from this licensing requirement when applying pesticides to experimental areas.

History: En. Sec. 19, Ch. 403, L. 1971; amd. Sec. 10, Ch. 462, L. 1977.

Amendments

The 1977 amendment expanded the section to cover dealers and sales; substi-

tuted "agencies" in the second sentence for "state agencies"; inserted "27-225 and 27-226" in the second sentence; and made minor changes in phraseology, punctuation and style.

27-232. Liability. The department of agriculture shall annually require from each commercial pesticide applicator proof of financial responsibility in amounts to be determined under rules promulgated by the department of agriculture.

History: En. Sec. 20, Ch. 403, L. 1971; amd. Sec. 29, Ch. 13, L. 1977; amd. Sec. 11, Ch. 462, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 13 and once by Ch. 462. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 13, Laws of 1977, substituted "annually" near the beginning of the section for "within two (2) years after the effective date of this act"; and made a minor change in phraseology.

Chapter 462, Laws of 1977, made the same changes as were made by Chapter 13.

27-233. Report of loss or damage—effect of failure to report. (1) A person suffering loss or damage resulting from the use or application of any pesticide by any person shall, within thirty (30) days from the time the occurrence of the loss became known to him, file with the department of agriculture a verified report of loss setting forth, so far as known to the claimant, the following:

- (a) Name and address of claimant.
- (b) Type, kind, and location of property alleged to be injured or damaged.
- (c) Date the alleged injury or damage occurred.
- (d) Name of person applying the pesticide and allegedly responsible for the loss or damage.
- (e) Name of the owner or occupant of the property for whom such pesticide application was made.

(2) The filing of such a report or the failure to file such a report shall not be alleged in any complaint which might be filed in a court of law, and the failure to file shall not be considered any bar to the maintenance of any criminal or civil action.

(3) The failure to file such a report shall not be a violation of this act. However, if the person failing to file such report is the only one injured from such use or application of a pesticide by any person, the department of agriculture may refuse to hold a hearing for the denial, suspension, or revocation of a license issued under this act until such report is filed. The filing of such report shall not constitute institution of a civil or criminal suit in any court, state or federal.

History: En. Sec. 21, Ch. 403, L. 1971.

27-234. Rules and regulations. (1) The department of agriculture may adopt by reference without a public hearing regulations adopted under the federal Insecticide, Fungicide, and Rodenticide Act, as amended. The

department may, after a public hearing, adopt all rules and regulations necessary to carry out this act.

(2) The rules may prescribe methods of:

(a) registration, application, use or restricting use, prohibiting use, offering or exposing for sale, any pesticide;

(b) determining whether pesticides are highly toxic to man;

(c) determining standards of coloring or discoloring for pesticides, and subjecting pesticides to the requirements of 27-218;

(d) licensing commercial applicators and operators, dealers, establishing methods of record keeping for applicators, operators, and dealers, and providing for the review of the records by the department of agriculture's authorized agent and the submission of the records to the department of agriculture upon written request;

(e) issuing farm applicator special use permits and the maintenance and submission of records by farm applicators issued special use permits;

(f) collection, examination, and standard deviation from guarantee analysis and umpire analysis of pesticides and devices;

(g) operating and maintaining equipment used by applicators;

(h) developing examinations which shall be held periodically throughout the state;

(i) establishing the form and content of all applications for licenses and permits;

(j) designating pesticides that may be sold at retail for home, yard, garden, and lawn use. The department of agriculture may also limit retail sale of pesticides, up to a specific number of pounds or gallons and concentration which would be sublethal to humans and animals if small amounts of it were accidentally swallowed, inhaled, sprayed, or dusted on the skin.

(k) revoking licenses and permits;

(l) registering or controlling any spray adjuvant such as a wetting agent, spreading agent, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent with or without toxic properties of its own intended to be used with any other pesticide as an aid to the application or effect of that other pesticide, whether or not distributed in a package or container separate from that of a pesticide with which it is to be used;

(m) registering pesticide fertilizer and other chemical blends or, instead of registration, establishing licensing, inspection, and fees for blending plants;

(n) establishing registration procedures for devices with a fee not to exceed \$5 per type of device, specifying classes of devices to be registered and providing for additional requirements.

(3) (a) Whenever the department of agriculture finds that those rules are necessary to carry out the purposes and intent of this act, the rules may relate to the time, place, manner, and method of registration, application, or selling of the pesticides, may restrict or prohibit use of

pesticides in the state or in designated areas during specified periods of time and shall encompass all reasonable factors which the department of agriculture considers necessary to prevent damage or injury to:

- (i) persons, animals, or pollinating insects from the effect of drift or careless application;
- (ii) the environment;
- (iii) plants, including forage plants;
- (iv) wildlife;
- (v) fish and other aquatic life.

(b) In issuing the rules, the department of agriculture shall give consideration to pertinent research findings and recommendations of other agencies of this state or of the federal government.

(4) If the department of agriculture finds that an emergency exists which requires immediate action with regard to the registration, use, or application of pesticides, the department of agriculture may, without notice or hearing, issue necessary orders or rules to protect the public health, welfare, and safety. An order or rule issued under this subsection is effective for the period prescribed by the Administrative Procedure Act. If the department of agriculture determines that the emergency order or rule should remain in effect, a public hearing under 27-235 shall be held within the above period to determine whether the order or rule should be adopted by the department of agriculture.

(5) All rules and orders issued by the department of agriculture shall be in writing, shall be entered in full in books to be kept by the department of agriculture for that purpose, shall be indexed, and shall be public records open for inspection at all times during reasonable office hours. Except for orders establishing or changing rules of practice and procedures, all orders made and published by the department of agriculture shall include and be based upon written findings of fact. A copy of any rule or order certified by the department of agriculture shall be received in evidence in all courts of this state with the same effect as the original.

History: En. Sec. 22, Ch. 403, L. 1971; amd. Sec. 123, Ch. 218, L. 1974; amd. Sec. 12, Ch. 462, L. 1977.

Amendments

The 1974 amendment substituted "department of agriculture" for "commissioner" in subsection (4); and made minor changes in phraseology, punctuation and style.

The 1977 amendment deleted "retailers" after "dealers" two places in subdivision

(2)(d); deleted references to regulations following references to rules throughout the section; substituted "a period prescribed by the Administrative Procedure Act" at the end of the second sentence of subsection (4) for "a period no longer than sixty (60) days"; deleted "or its secretary" after "department of agriculture" in the last sentence of subsection (5); and made minor changes in phraseology, punctuation and style.

27-235. Administrative procedures. The administration of this act and all rule making and hearing functions under the act shall be conducted in accordance with the Administrative Procedure Act.

History: En. Sec. 23, Ch. 403, L. 1971; amd. Sec. 124, Ch. 218, L. 1974; amd. Sec. 13, Ch. 462, L. 1977.

Amendments

The 1974 amendment substituted "director of agriculture" for "commissioner

of the department of agriculture" in subdivisions (1)(a)(iii) and (1)(a)(iv); deleted subdivisions (2)(a) through (2)(c) which stated that notice of hearings on complaints was to be given by personal service, publication, or certified or registered mail as provided by law in civil actions; deleted a final sentence from sub-

section (3) which provided that persons appearing at hearings may be represented by counsel; and made minor changes in phraseology and punctuation.

The 1977 amendment substituted the present section for specific rules governing the conduct of hearings.

27-236 to 27-238. Repealed.

Repeal

Sections 27-236 to 27-238 (Secs. 24 to 26, Ch. 403, L. 1971; Sec. 125, Ch. 218, L. 1974; Sec. 13, Ch. 30, L. 1977; Sec. 6, Ch.

453, L. 1977), relating to appeals from department of agriculture decisions, were repealed by Sec. 19, Ch. 462, Laws 1977.

27-239. Public information. The department of agriculture as it deems proper may alone or in co-operation with other state or federal agencies publish information regarding aspects of the use and application sections or registration sections of this act. This information cannot disclose operations of selling, production, or use of pesticides by any person.

History: En. Sec. 27, Ch. 403, L. 1971.

27-240. Advisory council. (1) The director of agriculture may appoint an advisory council to study and make recommendations on special pesticide problems in the state. The council shall consist of individuals representing, equally, controlled industry, agriculture, health, and wildlife. Governmental personnel, university personnel not included, may not be represented on the council. Governmental personnel shall meet with the council in an advisory capacity when requested by the council. The council may not exceed 12 members. The director of agriculture shall establish the time period in which the council shall exist. The time period may not exceed 2 years. The department of agriculture shall provide the necessary administrative, secretarial, and any other essential items to the council.

(2) Each member of the council shall receive as compensation for his services the sum of \$25 per day for each day actually spent in the performance of his duties and shall be reimbursed for travel expenses as provided for in 59-538, 59-539, and 59-801.

(3) The council may request that the department of agriculture hold a public hearing to assist it in gathering factual data and information on the special problems assigned it.

History: En. Sec. 28, Ch. 403, L. 1971; amd. Sec. 126, Ch. 218, L. 1974; amd. Sec. 14, Ch. 439, L. 1975; amd. Sec. 14, Ch. 462, L. 1977.

Amendments

The 1974 amendment substituted "director of agriculture" for "commissioner of the state department of agriculture" twice in subsection (1); substituted "advisory council" or "council" for "advisory committee" throughout the section; substituted "shall exist" for "shall hold meetings" after "council" in the sixth sentence

of subsection (1); and made minor changes in phraseology and punctuation.

The 1975 amendment substituted "travel expenses as provided for in sections 59-538, 59-539, and 59-801" for "actual per diem and necessary traveling expenses as provided by law" at the end of subsection (2).

The 1977 amendment deleted "as outlined in section 27-235" after "public hearing" in subsection (3); and made minor changes in phraseology and style.

27-241. Educational programs. The department of agriculture in co-operation with other state and federal agencies shall develop and conduct appropriate educational programs. The educational programs shall inform those individuals dealing in and applying pesticides as to correct methods of formulating, applying, storing, disposing, handling, and transporting pesticides.

History: En. Sec. 29, Ch. 403, L. 1971.

27-242. Cooperation with other agencies. (1) The department of agriculture may cooperate with agencies of this state or its subdivisions or with any agency of any other state or the federal government for the purpose of carrying out the provisions of this act for securing uniformity of rules and entering into reciprocal licensing and certification agreements with other states.

(2) The department and the department of health and environmental sciences shall enter into a memorandum of agreement concerning the inspection, regulation, and responsibilities of persons or activities that may be involved in the management, disposal, storage, transportation, treatment, recycling or recovery of hazardous wastes and the disposal of solid wastes.

(3) For the purpose of this section, solid waste means all putrescible and nonputrescible wastes including but not limited to garbage; rubbish; refuse; hazardous wastes; ashes; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood by-products and inert materials. Solid waste does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of state lands, slash and forest debris regulated under laws administered by the department of natural resources and conservation, or marketable wood by-products.

(4) For the purpose of this section hazardous waste means any waste or combination of wastes of a solid, liquid, contained gaseous, or semi-solid form which may cause or contribute to an increase in mortality or an increase in serious illness, taking into account the toxicity of the waste, its persistence and degradability in nature, its potential for assimilation or concentration in tissue, and other factors that may otherwise cause or contribute to adverse acute or chronic effects on the health of persons or other living organisms. Hazardous wastes include but are not limited to those which are toxic, radioactive, corrosive, flammable, irritants, strong sensitizers, or which generate pressure through decomposition, heat, or other means, excluding wood chips and wood used for manufacturing or fuel purposes.

History: En. Sec. 30, Ch. 403, L. 1971;
amd. Sec. 15, Ch. 462, L. 1977.

Amendments

The 1977 amendment substituted "rules

and entering into reciprocal licensing and certification agreements with other states" at the end of subsection (1) for "regulations"; and added subsections (2) through (4).

27-243. Enforcement. In enforcing this act, the department of agriculture or its duly authorized agents, upon reasonable cause, may enter

upon private and public premises and property with a warrant or consent of the inhabitant or owner to inspect or investigate at reasonable time:

- (1) equipment subject to this act;
- (2) actual or reported adverse effects caused by pesticides in humans, crops, animals, land, or other property;
- (3) records on the selling or use of pesticides and the person's stock of pesticides;
- (4) storage and disposal of pesticides by persons licensed or regulated under this act;
- (5) sample pesticides being applied or to be applied; or
- (6) the use and application of a pesticide.

History: En. Sec. 31, Ch. 403, L. 1971;
amd. Sec. 16, Ch. 462, L. 1977.

Amendments

The 1977 amendment added subdivisions (4) through (6); and made minor changes in phraseology, punctuation and style.

27-244. Discarding pesticides. It shall be unlawful for any person to discard any pesticide or pesticide container in such a manner as to cause injury to humans, domestic animals, wildlife, or to pollute any waterway in a way harmful to any wildlife therein or to the environment.

History: En. Sec. 32, Ch. 403, L. 1971.

27-245. Violation. (1) Any person convicted of violating any of the provisions of this act or the rules issued thereunder or who may misrepresent, impede, obstruct, hinder, or otherwise prevent or attempt to prevent the department of agriculture or its duly authorized agent in performance of its duty in connection with the provisions of this act, shall be adjudged guilty of a misdemeanor.

(2) The department of agriculture or its authorized representative is hereby authorized to apply to the district court of the county or any county wherein a violation is about to occur or has occurred to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this act or any rule promulgated under the act notwithstanding the existence of other remedies of law. The injunction is to be issued without bond.

(3) Nothing in this act is to be construed as requiring the department of agriculture or its authorized agent to report for prosecution or for the institution of seizure proceedings, minor violations of the act when it believes the public interest will be best served by other remedial action or by a suitable notice of warning in writing; nor is any part of this act to be construed to apply to common carriers transporting shipments tendered to them by the general public.

(4) Notwithstanding any other provisions of this section, if any person with intent to defraud uses or reveals information relative to formulas of products acquired under the authority of 27-217, he shall, upon conviction, be fined not more than \$500 or imprisoned for not more than 1 year or both.

(5) In all prosecutions under the registration section involving the composition of a lot of pesticides, a certified copy of the official analysis signed by the department of agriculture's authorized chemist shall be accepted as prima facie evidence of the composition.

History: En. Sec. 34, Ch. 403, L. 1971; amd. Sec. 17, Ch. 462, L. 1977.

Amendments

The 1977 amendment deleted "and regulations" after "rules" in subsection (1); inserted "is about to occur or" before "has occurred" in subsection (2); deleted "or regulation" after "rule" in subsection (2); and made minor changes in phraseology, punctuation and style.

Separability Clauses

Section 33 of Ch. 403, Laws 1971 read "Separability. If any provision of this act is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, by the court of competent jurisdiction, the constitutionality of the remainder of the act and the applicability thereof to other persons and circumstances shall not be affected thereby."

Section 18 of Ch. 462, Laws 1977 read "If a part of this act is invalid, all valid parts that are severable from the invalid

part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clauses

Section 35 of Ch. 403, Laws 1971 read "Sections 27-201, 27-202, 27-203, 27-204, 27-205, 27-206, 27-207, 27-208, 27-209, 27-210, 27-211 and 27-212, R. C. M., 1947, are repealed."

Section 19 of Ch. 462, Laws 1977 read "Sections 27-236, 27-237, and 27-238, R. C. M. 1947, are repealed."

Effective Dates

Section 36 of Ch. 403, Laws 1971 read "The registration and licensing provisions of this act shall be effective January 1, 1972."

Section 20 of Ch. 462, Laws 1977 provided the act should be effective on its passage and approval. Approved April 26, 1977.

CHAPTER 3—LABELING OF IMPORTED MEAT

Section

27-318. Stores to label imported meats—supplier to furnish information.

27-319. Penalty.

27-320. Findings and purpose.

27-301 to 27-317. Repealed.

Repeal

Sections 27-301 to 27-317 (Secs. 1 to 13, 15 to 17, 19, Ch. 49, L. 1939; Sec. 1, Ch. 93, L. 1957; Sec. 240, Ch. 147, L. 1963; Sec. 1, Ch. 65, L. 1967; Sec. 10, Ch. 93,

L. 1969), relating to the state board of food distributors and the regulation of food stores and foodstuffs, were repealed by Sec. 2, Ch. 256, Laws of 1973.

27-318. Stores to label imported meats—supplier to furnish information. Any grocery store or similar establishment selling fresh meat at retail shall, if possible, ascertain the origin of all fresh meat which it offers for sale. Such information shall be provided by the supplier of such meat at the time of delivery, if reasonably available to the supplier. On meat produced outside the United States of America, the store shall place the words "FOREIGN MEAT" or "MEAT FROM (country of origin)" in prominent letters upon the package in which such meat is sold to the consumer. If the country of origin of foreign meat is unknown, the words "COUNTRY OF ORIGIN UNKNOWN" shall be placed upon the package in like manner.

History: En. 27-318 by Sec. 1, Ch. 415, L. 1975.

Title of Act

An act requiring imported meats to be labeled as such in food stores, and providing a penalty.

27-319. Penalty. A person in charge of a grocery store or similar establishment or a supplier of fresh meat who fails to comply with the provisions of this act by willfully failing to label foreign meat or provide information under the provisions of this act commits a misdemeanor, and upon conviction shall be fined not less than one hundred dollars (\$100) nor more than two hundred fifty dollars (\$250).

History: En. 27-319 by Sec. 2, Ch. 415, L. 1975.

27-320. Findings and purpose. The legislature finds that sanitary meat inspection standards in other meat producing nations cannot be guaranteed to be equal to the standards applied to the inspection of American meat, and declares that the purpose of this act is to protect the public health and safety by placing Montana consumers on notice of the possibility of lower inspection standards in such other nations.

History: En. 27-320 by Sec. 3, Ch. 415, L. 1975.

Separability Clause

Section 4 of Ch. 415, Laws 1975 read "If a part of this act is invalid, all valid

parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

CHAPTER 4—SUPERVISION OF MILK INDUSTRY— STATE MILK CONTROL BOARD

Section

- 27-402. General purpose.
- 27-403. Definitions.
- 27-405. General powers of the department.
- 27-406. Markets.
- 27-407. Establishment of minimum prices.
- 27-408. Licenses to producers, producer-distributors, distributors and jobbers.
- 27-409. Licenses—disposition of income.
- 27-410. Application for licenses.
- 27-411. Declining, suspending and revoking licenses—penalties in lieu of suspension or revocation.
- 27-413. Rules and orders.
- 27-414. Rules of fair trade practices.
- 27-414.1. Limitation on extension of credit to retailers.
- 27-414.2. Financing prohibitions—producer and retailer.
- 27-415. Entry, inspection and investigation.
- 27-416. Reports of dealers—accounting system—records.
- 27-417. Disposition of fines.
- 27-421. Co-operation with other governmental agencies.
- 27-422. Violations made misdemeanors—penalties.
- 27-423. Constructions, exceptions and limitations.
- 27-424. Additional remedies.
- 27-426. Bonds required of distributors—amounts—forms and conditions.
- 27-430. Testing of milk.

27-402. General purpose. The general purpose of this chapter is to protect and promote public welfare and to eliminate unfair and demoralizing trade practices in the milk industry. It is enacted in the exercise of the police powers of the state.

History: En. Sec. 2, Ch. 204, L. 1939; amd. Sec. 2, Ch. 4, L. 1967; amd. Sec. 88, Ch. 431, L. 1975.

Amendments

The 1975 amendment substituted "chapter" for "law" near the beginning of the first sentence.

27-403. Definitions. (1) Unless the context requires otherwise, in this chapter:

(a) "Board" means the board of milk control provided for in section 82A-406.

(b) "Person" means a person, firm, corporation, or co-operative association.

(c) "Producer" means a person who produces milk for consumption in this state, selling it to a distributor.

(d) "Department" means the department of business regulation provided for in Title 82A, chapter 4.

(e) "Distributor" means a person purchasing milk from any source, either in bulk or in packages, and distributing it for consumption in this state. The term includes what are commonly known as jobbers and independent contractors. The term, however, excludes a person purchasing milk from a dealer licensed under this chapter, for resale over the counter at retail, or for consumption on the premises.

(f) "Producer-distributor" means a person both producing and distributing milk for consumption in this state.

(g) "Retailer" means a person selling milk in bulk or in packages over the counter at retail, or for consumption on the premises, and includes, but is not limited to, retail stores of all types, restaurants, boardinghouses, fraternities, sororities, confectionaries, public and private schools, including colleges and universities, and both public and private institutions and instrumentalities of all types and description.

(h) "Dealer" means a producer, distributor, producer-distributor, jobber, or independent contractor.

(i) "Licensee" means a person who holds a license from the department.

(j) "Market" means an area of the state designated by the department as a natural marketing area.

(k) "Consumer" means a person or an agency, other than a dealer, who purchases milk for consumption or use.

(l) "Producer prices" means those prices at which milk owned by a producer is sold in bulk to a distributor.

(m) "Wholesale prices" means those prices at which milk owned by a distributor is sold, in bulk or in packages, to a retailer.

(n) "Jobber prices" means those prices at which milk owned by a distributor is sold, in bulk or in packages, to a jobber or independent contractor.

(o) "Retail prices" means those prices at which milk owned by a retailer is sold, in bulk or in packages, over the counter at retail, or for consumption on the premises.

(p) "Milk" means the lacteal secretion of a dairy animal or animals, including those secretions when raw and when cooled, pasteurized, standardized, or homogenized, recombined, concentrated fresh, or otherwise processed and all of which is designated as grade A by a duly constituted health authority, and also includes those secretions which are in any man-

ner rendered sterile or aseptic, notwithstanding whether they are regulated by any health authority of this or any other state or nation.

(q) Class I milk includes all bottled or packaged milk, low fat, buttermilk, chocolate milk, whipping cream, commercial cream, half and half, skim milk, fortified skim milk, skim milk flavored drinks, and any other fluid milk not specifically classified in this chapter, whether raw, pasteurized, homogenized, sterile or aseptic.

(r) Class II milk includes milk used in the manufacture of ice cream and ice cream mix, ice milk, sherbet, eggnog, cultured sour cream, cottage cheese, condensed milk, and powdered skim for human consumption.

(s) Class III milk includes milk used in the manufacture of butter, cheddar cheese, process cheese, livestock feed, powdered skim other than for human consumption, and skim milk dumped.

(2) The department may assign new milk products, not expressly included in one of the classes defined in this section, to the class which in its discretion it determines to be proper.

History: En. Sec. 3, Ch. 204, L. 1939; amd. Sec. 1, Ch. 192, L. 1959; amd. Sec. 3, Ch. 4, L. 1967; amd. Sec. 1, Ch. 107, L. 1971; amd. Sec. 89, Ch. 431, L. 1975.

Amendments

The 1971 amendment deleted "at wholesale" before "to a distributor" in the definition of "producer"; inserted "from any source, either in bulk or in packages" in the first sentence of the definition of "distributor"; inserted the second sentence in the definition of "distributor"; inserted the definition of "retailer"; added "jobber or independent contractor" at the end of the definition of "dealer"; inserted the definition of producer prices after consumer; inserted the definitions of "wholesale prices," "jobber prices" and "retail prices"; added "and also includes such secretions * * * or any other state or nation" at the end of the definition of "milk"; deleted "raw, pasteurized and homogenized" near the beginning of the definition of "Class I milk"; added

"whether raw, pasteurized, homogenized, sterile or aseptic" at the end of the definition of "Class I milk"; and made minor changes in phraseology and punctuation.

The 1975 amendment inserted the subsection and subdivision designations; substituted "chapter" for "act" throughout the section; substituted the definition of board in subdivision (1)(a) for a definition reading "means the state agency created by this act, to be known as the Montana milk control board"; inserted subdivision (1)(d) defining department; substituted "department" for "board" in subdivisions (1)(i) and (1)(j); deleted the definition of "Association"; substituted "department may assign new milk products, not expressly included in one of the classes defined in this section" in subsection (2) for "board shall have power and authority to assign milk products hereafter developed"; and made numerous minor changes in phraseology and punctuation.

27-404. Repealed.

Repeal

Section 27-404 (Sec. 4, Ch. 204, L. 1939; Sec. 1, Ch. 249, L. 1957; Sec. 2, Ch. 192,

L. 1959; Sec. 16, Ch. 177, L. 1965), relating to the milk control board, was repealed by Sec. 176, Ch. 431, Laws 1975.

27-405. General powers of the department. (1) The department shall supervise, regulate, and control the milk industry of this state, including the production, processing, storage, distribution, and sale of milk sold for consumption in this state. Nothing in this chapter abrogates or affects the status, force, or operation of any provision of public health laws or the law under which the department of livestock is constituted together with the department of livestock rules or county board of health rules, or

municipal ordinances for the promotion or protection of the public health. The department may cooperate with the department of health and environmental sciences, the board of livestock or any county or city board of health or the department of agriculture in enforcing this chapter.

(2) The department shall investigate all matters pertaining to the production, processing, storage, distribution, and sale of milk in this state and conduct hearings upon any subject pertinent to the administration of this chapter. The department may subpoena milk dealers, their records, books, and accounts, and any other person from whom information may be desired or considered necessary to carry out the purposes and intent of this chapter and may take depositions of witnesses who are sick or absent from the state or who cannot otherwise appear in person before the department at its offices. The department shall give at least 10 days' notice to the proposed witness.

History: En. Sec. 5, Ch. 204, L. 1939; amd. Sec. 3, Ch. 192, L. 1959; amd. Sec. 4, Ch. 4, L. 1967; amd. Sec. 1, Ch. 267, L. 1975; amd. Sec. 90, Ch. 431, L. 1975; amd. Sec. 1, Ch. 19, L. 1977.

Amendments

Chapter 267, Laws of 1975 inserted "including transportation rates which distributors, contract haulers, and others charge producers" in subsection (1).

Chapter 431, Laws of 1975 substituted references to the department of livestock for references to the Montana livestock sanitary board throughout the section; substituted "department of health and environmental sciences" for "state board of health" in the last sentence of subsection (1); deleted former subsections (3) to (5) relating to service of process, compensation of witnesses, hearings and investigations; and settlement of controversies; and made minor changes in phraseology, punctuation and style throughout the section. For prior version, see parent volume.

The 1977 amendment deleted "transportation, including transportation rates which distributors, contract haulers, and others charge producers" after "production" in the first sentence of subsection (1); inserted "sold" near the end of the first sentence of subsection (1); deleted "transportation" after "production" in the first sentence of subsection (2); deleted "issue commissions to" before "take depositions" in the second sentence of subsection (2); and made minor changes in phraseology, punctuation and style.

Transportation Charges

The board had power to regulate transportation charges for fluid milk prior to the 1975 amendment inserting the words "including transportation rates . . ." in subsection (1). *Vita-Rich Dairy, Inc. v. Department of Business Regulation*, — M —, 553 P 2d 980.

27-406. Markets. (1) Pursuant to the declaration of policy relating to milk set forth in section 27-401, the department shall designate natural marketing areas which shall together embrace all the geographical area of the state and shall enforce minimum producer, wholesale, and retail prices established for those areas by the board.

(2) Natural marketing areas shall be established throughout the state by the department. Before a proposed natural marketing area is established the department, after notice of at least thirty (30) days, shall hold a hearing or hearings, at a place or places within the proposed area, at which producers and distributors doing business within the proposed natural marketing area, who are licensed by the department of livestock, and the consuming public may present evidence and testify. If the hearing or hearings make it evident to the department that the establishment of the proposed natural marketing area is in the public interest, the department shall establish the natural marketing area.

(3) The department may from time to time adjust the boundaries of natural marketing areas, if after a hearing upon notice of at least thirty (30) days to all interested parties it finds the adjustment to be in the public interest.

History: En. Sec. 6, Ch. 204, L. 1939; amd. Sec. 4, Ch. 192, L. 1959; amd. Sec. 2, Ch. 107, L. 1971; amd. Sec. 91, Ch. 431, L. 1975.

Amendments

The 1971 amendment deleted from the end of the preliminary paragraph a proviso reading "provided, that at all times there shall not be less than five (5) natural marketing areas in the state"; substituted "the" for "any previously existing" before "milk control board" in subdivision (c); and made a minor change in phraseology.

The 1975 amendment designated the first paragraph as subsection (1); redesignated former subdivisions (a) and (b) as subsections (2) and (3); deleted former subdivisions (c) and (d); substituted "department shall designate" for "milk control board is vested with the duty and authority to designate" in subsection (1); substituted "shall enforce" for "to pre-

scribe and enforce" in subsection (1); substituted "prices established for those areas by the board" for "prices in such areas in the manner set forth in this act" at the end of subsection (1); substituted references to the department of livestock for references to the livestock sanitary board throughout the section; substituted "make it evident to the department" for "make it evident to a majority of the board" in subsection (2); substituted "shall establish the natural marketing area" at the end of subsection (2) for "shall make findings and conclusions and proceed to establish such natural marketing area"; deleted "and alter" after "adjust" in subsection (3); deleted "after they have been established" after "marketing areas" in subsection (3); deleted "and orders" after "it finds" in subsection (3); and made numerous minor changes in phraseology and punctuation. For prior version, see parent volume and 1971 amendment note.

27-407. Establishment of minimum prices. (1) The board shall fix minimum producer, wholesale, jobber, and retail prices for class I milk, and minimum producer prices only for class II and class III milk in all areas of the state, by adopting rules in a manner prescribed by the Montana Administrative Procedure Act.

(2) The board shall establish such prices by means of flexible formulas which shall be devised so that they bring about such automatic changes in all minimum prices as are justified on the basis of changes in production costs and supply, processing and distribution costs, and retailing costs.

(3) The board shall consider the balance between production and consumption of milk, the costs of production and distribution, and prices in adjacent and neighboring areas and states so that minimum prices which are fair and equitable to producers, distributors, jobbers, retailers, and consumers may result.

(4) The board shall, when publishing notice of proposed rulemaking under authority of this section, set forth the specific factors which shall be taken into consideration in establishing the formulas and in particular in determining costs of production and distribution and of the actual dollars and cents costs of production and distribution which preliminary studies and investigations of auditors or accountants in its employment indicate will or should be shown at the hearing so that all interested parties will have opportunity to be heard and to question or rebut such considerations as a matter of record.

(5) Such specific factors may include but shall not be limited to the following items:

(a) Current and prospective supplies of milk in relation to current and prospective demands for such milk for all purposes;

(b) The ability and willingness of consumers to purchase, which shall include among other things, per capita disposable income statistics, consumer price indices, and wholesale price indices;

(c) The cost factors in producing milk, which shall include among other things the prices paid by farmers generally (as used in parity calculations of the United States Department of Agriculture), prices paid by farmers for dairy feed in particular and farm wage rates in this state;

(d) The alternative opportunities, both farm and nonfarm, open to milk producers, which shall include among other things, prices received by farmers for all products other than milk, prices received by farmers for beef cattle, and the percentage of unemployment in the state and nation as determined by appropriate state and federal agencies;

(e) The prices of butter-nonfat dry milk and cheese;

(f) The cost factors in distributing milk, which shall include among other things the prices paid by distributors for equipment of all types required to process and market milk and prevailing wage rates in this state;

(g) The cost factors in jobbing milk, which shall include among other things raw product and ingredient costs, carton or other packaging cost, processing cost and that part of general administrative costs of the supplying distributor which may properly be allocated to the handling of milk to the point at which such milk is at the supplying distributor's dock, equipment of all types required to market milk, and prevailing wage rates in the state;

(h) The need, if any, for freight or transportation charges to be deducted by distributors from producer prices for bulk milk;

(i) A reasonable return on necessary investment to all ordinarily efficient and economical milk dealers.

(6) If the board at any time proposes to base all or any part of any official order establishing or revising any milk pricing formulas upon facts within its own knowledge, as distinguished from evidence which may be presented to it by the consuming public or the milk industry, the board shall, when publishing notice of proposed rulemaking under authority of this section, cause notice to be given to the consuming public and the milk industry of the specific facts within its own knowledge which it will consider, so that all interested parties will have opportunity to be heard and to question or rebut such facts as a matter of record.

(7) The board, after consideration of the evidence produced, shall make written findings and conclusions and shall fix by official rule:

(a) The formula whereby minimum producer prices for milk in classes I, II, and III shall be computed.

(b) The formula whereby minimum wholesale prices for milk in class I shall be computed.

(c) The formula whereby minimum jobber prices for milk in class I shall be computed.

(d) The formula whereby minimum retail prices for milk in class I shall be computed.

(8) This section shall not be construed as requiring the board to promulgate any specific number of formulas, but shall be construed liberally so that the board may adopt any reasonable method of expression to accomplish the objective set forth in (a), (b), (c), and (d) above. If the evidence presented to the board at any public hearing for the establishment or revision of milk pricing formulas is found by the board to require the establishment of separate and varying wholesale prices for any particular uses, the board shall designate the reasons therefor and establish such separate formulas.

(9) Each rule establishing or revising any milk pricing formulas shall classify milk by forms, classes, grades, or uses as the board may deem advisable and shall specify the minimum prices therefor.

(10) The milk produced in one natural marketing area and sold in another natural marketing area shall be paid for by a distributor or dealer in accordance with the pricing order of the area where produced at the price therein specified of the class or use in which it is ultimately used or sold.

(11) The board shall adopt rules after notice and hearing in the manner prescribed by the Montana Administrative Procedure Act to regulate transportation rates which distributors, contract haulers, and others charge producers for both farm-to-plant and interplant transportation of milk. No allowance for transportation of milk between plants may be permitted unless it is found by the board to be necessary to permit the movement of milk in the public interest.

(12) All milk purchased within a natural marketing area by a distributor shall be purchased on a uniform basis. The basis to be used shall be established by the board after the producers and the distributors of the area have been consulted.

(13) The board may amend any official rule in the same manner provided herein for the original establishment of milk pricing formulas; provided, further, the board may in its discretion, when it determines the need exists, notice and hold statewide public hearings affecting establishment or revision of milk pricing formulas in all market areas of the state.

(14) Upon petition of a distributor or a majority of his producers, the board shall hold a hearing to receive and consider evidence regarding the advisability and need for a base or quota plan as a method of payment by that distributor of producer prices; and if the board finds that the evidence adduced at such hearing warrants the establishment of a base or quota plan, the board shall proceed by official order to establish the same.

(15) Upon petition by any producer, producer-distributor, or distributor in any marketing area, the board shall hold a hearing to receive and consider evidence regarding the advisability and need for an areawide or statewide pooling arrangement as a method of payment of producer prices, provided that at such hearing the board shall among other things specifically receive and consider evidence concerning production and marketing prac-

tices which have historically prevailed in the area concerned or statewide, as the case may be; and if the board finds that the evidence adduced at such hearing warrants the establishment of such an areawide or statewide pooling arrangement, the board shall proceed by official order to establish the same, but such official order shall be of no force or effect until it is approved in a referendum conducted by the board among affected producers, producer-distributors, and distributors.

(16) The requirements hereinabove set forth concerning notices of hearings for the establishment of milk pricing formulas shall apply to any hearings regarding base or quota plans or areawide or statewide pooling arrangements, or abandonment thereof.

(17) Rules adopted pursuant to this section shall be enforced and audited for compliance by the milk control division of the department of business regulation.

History: En. Sec. 7, ch. 204, L. 1939; amd. Sec. 5, Ch. 192, L. 1959; amd. Sec. 5, Ch. 4, L. 1967; amd. Sec. 3, Ch. 107, L. 1971; amd. Sec. 1, Ch. 127, L. 1974; amd. Sec. 92, Ch. 431, L. 1975; amd. Sec. 2, Ch. 19, L. 1977.

Amendments

The 1971 amendment inserted the first two paragraphs; deleted "Orders fixing minimum prices for class I milk" from the beginning of the present third paragraph; substituted "promulgation of such formulas" for "the fixing of prices for class I milk in any market" in the first sentence of the third paragraph; inserted "jobbers, retailers" near the end of the fifth paragraph; substituted "thirty (30)" for "ten (10)" near the beginning of the sixth paragraph; substituted "establishment or revision of milk pricing formulas" for "minimum prices" near the beginning of the sixth paragraph; inserted "in establishing the formulas and in particular" near the middle part of the sixth paragraph; inserted the numbered subdivisions and the sentence preceding them; substituted "establishing or revising any milk pricing formulas" for "fixing minimum prices on class I milk" near the beginning of the first paragraph following the numbered subdivisions; substituted "thirty (30)" for "ten (10)" in the first paragraph following the numbered subdivisions; substituted "establishment or revision of milk pricing formulas" for "minimum prices" near the middle part of the first paragraph following the numbered subdivisions; inserted the lettered subdivisions and the first paragraph following them; deleted a sentence reading "The minimum prices to be paid by the milk dealers to producers and others for milk" from the beginning of the present second paragraph following the lettered subdivisions; substituted "establishing or revising any milk pricing formulas" for "fixing minimum prices"

near the beginning of the second paragraph following the lettered subdivisions; deleted former paragraphs (b) and (c) and another paragraph after the present fifth paragraph following the lettered subdivisions; substituted "establishing or revising milk pricing formulas" for "fixing prices to be charged or paid for class I milk in any of its forms, classes, grades or uses" near the beginning of the first proviso of the sixth paragraph following the lettered subdivisions; substituted "establishment of milk pricing formulas" for "fixing of prices" at the end of the first proviso of the sixth paragraph following the lettered subdivisions; substituted "establishment or revision of milk pricing formulas" for "minimum prices for class I milk" in the second proviso of the sixth paragraph following the lettered subdivisions; added the last three paragraphs; deleted former subsection (2), for text of which see parent volume; and made minor changes in style, phraseology and punctuation.

The 1974 amendment added "by adopting rules in a manner prescribed by the Montana Administrative Procedure Act" to the end of the first paragraph; deleted "which it shall adopt by official order and" in the second paragraph after "formulas"; deleted a former third paragraph which is the first paragraph in the parent volume and as amended in 1971; substituted "when publishing notice of proposed rule making under authority of this section, set forth" at the beginning of the fourth paragraph for "at least thirty (30) days prior to the date set for any public hearing on establishment or revision of milk pricing formulas, cause notice to be given to the consuming public and the milk industry of"; deleted "at a public hearing" in the sixth paragraph after "presented to it"; substituted "when publishing notice of proposed rule making under authority of this section" in the sixth paragraph for

"at least thirty (30) days prior to the date set for any public hearing on establishment or revision of milk pricing formulas"; deleted "at such hearing" in the seventh paragraph after "produced"; substituted "rule" for "order" in the seventh, ninth and thirteenth paragraphs; deleted "upon its own motion, or upon application in writing from any market, or from any party at interest, alter, revise or" at the beginning of the thirteenth paragraph after "The board may"; deleted "therefore made by the board provided that before making, revising, or amending any order establishing or revising milk pricing formulas, the board shall hold a public hearing on such matter" in the thirteenth paragraph before "in the same manner"; and made minor changes in phraseology.

The 1975 amendment inserted the subsection and subdivision designations; redesignated former items (1) through (9) as subdivisions (5)(a) through (5)(i); and made a minor change in punctuation.

The 1977 amendment substituted subsection (11) for "No allowance for freight, other than freight for transportation of milk from the farm to plant, shall be charged to a producer by a distributor or dealer unless it is found and ordered by the board, after notice and hearing in the manner hereinbefore specified, that such an additional freight allowance is necessary to permit the movement of milk in the public interest"; added subsection (17); and made minor changes in phraseology, punctuation and style.

Repealing Clause

Section 3 of Ch. 19, Laws 1977 read "Section 82A-406.1, R. C. M. 1947, is repealed."

Cross-References

Functions continued in board, sec. 82A-406(3).

27-408. Licenses to producers, producer-distributors, distributors and jobbers. In any market, where the provisions of this chapter apply, it is unlawful for a producer, producer-distributor, distributor or jobber to produce, transport, process, store, handle, distribute, buy or sell milk unless the dealer is properly licensed as provided by this chapter. It is unlawful for a person to buy, sell, handle, process, or distribute milk which he knows or has reason to believe has been previously dealt with or handled in violation of any provision of this chapter. The department may decline to grant a license, or may suspend or revoke a license already granted, upon due cause and after hearings.

History: En. Sec. 8, Ch. 204, L. 1939; amd. Sec. 4, Ch. 107, L. 1971; amd. Sec. 93, Ch. 431, L. 1975.

Amendments

The 1971 amendment inserted "or jobber" in the first sentence.

The 1975 amendment substituted "chapter" for "act" throughout the section; substituted "department" for "board" in the last sentence; and made minor changes in phraseology.

27-409. Licenses—disposition of income. (1) A producer, producer-distributor, distributor or jobber may not engage in the business of producing or selling milk subject to this chapter in this state without first having obtained a license from the department of livestock or, in the case of milk entering this state from another state or foreign nation, without complying with the requirements of the Montana Food, Drug and Cosmetic Act, and without being licensed under this chapter by the department. The annual fee for the license from the department is two dollars (\$2), and is due before July 1, and shall be deposited by the department to the credit of the general fund.

(2) In addition to the annual license fee, the department shall, in each year, before April 1, for the purpose of securing funds to administer and enforce this chapter, levy an assessment upon producers, producer-distributors, and distributors as follows:

(a) A fee per hundredweight on the total volume of all milk subject to this act produced and sold by a producer-distributor.

(b) A fee per hundredweight on the total volume of all milk subject to this act sold by a producer.

(c) A fee per hundredweight on the total volume of all milk subject to this act sold by a distributor, excepting that which is sold to another distributor.

(3) The department shall adopt rules fixing the amount of each fee. The amounts may not exceed levels sufficient to provide for the administration of this act. The fee assessed on a producer or on a distributor may not be more than one-half ($\frac{1}{2}$) the fee assessed on a producer-distributor.

(4) The assessment upon producer-distributors, producers, and distributors shall be paid quarterly before January 15, April 15, July 15, and October 15, of each year. The amount of the assessment shall be computed by applying the fee designated by the department to the volume of milk sold in the preceding calendar quarter.

(5) Failure of a producer, producer-distributor, or distributor to pay an assessment when due is a violation of this chapter and his license under this chapter automatically terminates and is void. A license so terminated shall be reinstated by the department upon payment of a delinquency fee equal to thirty per cent (30%) of the assessment which was due.

(6) All assessments required by this chapter shall be deposited by the department in the earmarked revenue fund. All costs of administering this chapter, including the salaries of employees and assistants, per diem and expenses of board members, and all other disbursements necessary to carry out the purpose of this chapter, shall be paid out of control board moneys in that fund.

(7) The department may, if it finds the costs of administering and enforcing this chapter can be derived from lower rates, amend its rules to fix the rates at a less amount on or before the first day of April in any year.

History: En. Sec. 9, Ch. 204, L. 1939; amd. Sec. 6, Ch. 192, L. 1959; amd. Sec. 157, Ch. 147, L. 1963; amd. Sec. 5, Ch. 107, L. 1971; amd. Sec. 2, Ch. 127, L. 1974; amd. Sec. 94, Ch. 431, L. 1975.

Amendments

The 1971 amendment inserted "or jobber" near the beginning of the first sentence of the first paragraph; inserted "or, in the case of milk entering this state * * * Drug and Cosmetic Act" in the latter part of the first sentence of the first paragraph; deleted "commencing in the year 1959" after "first day of July" in the second sentence of the first paragraph; and deleted "commencing in July of 1959" after "April of each year" from the first paragraph following the lettered subdivisions.

The 1974 amendment substituted "department of livestock, animal health di-

vision" in the first sentence of the first paragraph for "Montana livestock sanitary board"; substituted "department of business regulation" and "department" throughout the section for "milk control board" and "board"; deleted "of not more than five cents (5¢)" in subdivision (a) of the second paragraph after "fee"; deleted "of not more than two and one-half cents (2½¢)" in subdivisions (b) and (c) of the second paragraph after "fee"; inserted the third paragraph; deleted "The rates of assessment above provided are maximum rates, and" from the beginning of the last paragraph; and inserted "amend its rules to" in the last paragraph before "fix the rates."

The 1975 amendment inserted the subsection designations; substituted "chapter" for "act" throughout the section; deleted "animal health division" after "department of livestock" in the first sen-

tence of subsection (1); substituted references to the department for references to the department of business regulation throughout the section; substituted "before July 1" for "on or before the first day of July" in the second sentence of subsection (1); substituted "before April 1" for "on or before the first day of April" in subsection (2); changed the dates in subsection (4) from on or before the fifteenth of July, October, January and April, to before the fifteenth of January, April, July and October; inserted the ref-

erence to the department in the last sentence of subsection (5); substituted "control board moneys" for "department of business regulation moneys" in the last sentence of subsection (6); and made numerous changes in phraseology.

Effective Date

Section 3 of Ch. 127, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 11, 1974.

27-410. Application for licenses. An applicant for license to operate as a producer, producer-distributor, distributor, or jobber shall file a signed application upon a blank prepared under authority of the department, and an applicant shall state facts concerning his circumstances and the nature of the business to be conducted which in the opinion of the department are necessary for the administration of this chapter. The application shall certify the applicant to be the holder of all licenses required by the department of livestock for the conduct of his business or, in the case of milk entering this state from another state or foreign nation, compliance with the requirements of the Montana Food, Drug and Cosmetic Act. The application shall be accompanied by the license fee required to be paid.

History: En. Sec. 10, Ch. 204, L. 1939; amd. Sec. 7, Ch. 192, L. 1959; amd. Sec. 6, Ch. 107, L. 1971; amd. Sec. 95, Ch. 431, L. 1975.

Amendments

The 1971 amendment inserted "or jobber" near the beginning of the first sentence; and inserted "or, in the case of milk entering this state * * * Drug and Cosmetic Act" in the second sentence.

The 1975 amendment substituted references to the department of livestock for references to the Montana livestock sanitary board throughout this section; substituted "chapter" for "act" at the end of the first sentence; divided the former second sentence into the second and third sentences; and made minor changes in phraseology and punctuation.

27-411. Declining, suspending and revoking licenses—penalties in lieu of suspension or revocation. (1) The department may refuse to grant a license or may suspend or revoke a license already granted for due cause upon due notice and after hearing. The violation of any provisions of this chapter or of any lawful order or rule of the board or department, the failure or refusal to make required statements or reports, or failure to pay license or assessment fees are causes for which the department may, at its discretion, suspend, or revoke a license.

(2) In place of suspension or revocation of a license the department may assess a civil penalty not to exceed five hundred dollars (\$500) per day for each daily failure to comply with or each daily violation of the provisions of this chapter or of any lawful order or rule of the department or board. If the person against whom a civil penalty is assessed fails to pay the civil penalty immediately, the department shall collect the civil penalty by a civil proceeding in the district court of the first judicial district. This penalty shall be construed as civil and not criminal in nature. Any moneys received by the department as a result of collection of civil

penalties shall be paid into the earmarked revenue fund as provided by section 27-417, R. C. M. 1947.

History: En. Sec. 11, Ch. 204, L. 1939; amd. Sec. 7, Ch. 107, L. 1971; amd. Sec. 96, Ch. 431, L. 1975.

Amendments

The 1971 amendment designated the former provisions as subsection (1); inserted "or assessment" after "in the payment of license" in the second sentence of subsection (1); added subsection (2); and made minor changes in style and punctuation.

The 1975 amendment substituted "The department may refuse" for "The board may decline" at the beginning of subsection (1); substituted "chapter" for "act" throughout the section; substituted references to rules for references to regulations throughout the section; inserted "or department" after "board" in the second sentence of subsection (1); substituted "or failure to pay" for "and aggravated delinquency in the payment of" in the second sentence of subsection (1); substi-

tuted a reference to the department for a reference to the board near the end of subsection (1); deleted from the end of subsection (1) "provided that no license shall be fully revoked except upon the approval of the majority of all members of the board"; substituted "department" for "board" in the first sentence of subsection (2); inserted the reference to the department before "board" at the end of the first sentence of subsection (2); deleted "or refuses" after "fails" in the second sentence of subsection (2); substituted "department shall collect" for "board is empowered and directed to collect" in the second sentence of subsection (2); substituted the reference to the department for a reference to the board in the last sentence of subsection (2); substituted "earmarked revenue fund as provided by section 27-417, R. C. M. 1947" for "state general fund"; and made numerous minor changes in phraseology and punctuation.

27-413. Rules and orders. The department may adopt and enforce rules and orders necessary to carry out the provisions of this chapter and any orders adopted under it by the department or the board. A rule or order shall be posted for public inspection in the main office of the department for thirty (30) days, and a copy shall be filed in the office of the department. A copy shall also be sent by registered letter to the secretary of each area, except in the case of an order directed only to a person or persons named in it, which shall be served by personal delivery of a copy, or by mailing a copy to each person to whom the order is directed, or, in the case of a corporation, to any officer or agent of the corporation upon whom a summons may be served in accordance with laws of this state. The posting, in the main office of the department, of a rule or order, not required to be personally served as provided in this section, and the filing in the office of the department is sufficient notice to all persons affected by the rule or order. A rule or order when properly posted and filed or served, as provided in this section, has the force of law.

History: En. Sec. 13, Ch. 204, L. 1939; amd. Sec. 97, Ch. 431, L. 1975.

Amendments

The 1975 amendment substituted references to the department for references to the board throughout the section; substituted "provisions of this chapter and any orders adopted under it by the department or the board" for "provisions of this act"

at the end of the first sentence; deleted "in the United States mails, with postage prepaid and properly addressed" after "by mailing a copy" in the second sentence; inserted "personally" before "served" in the third sentence; substituted "as provided in this section" for "as provided in this act" in the last sentence; and made minor changes in phraseology and punctuation.

27-414. Rules of fair trade practices. The department may adopt reasonable rules governing fair trade practices as they pertain to the transaction of business among licensees under this chapter and among

licensees and the general public. Those rules shall contain, but are not limited to, provisions prohibiting the following methods of doing business which are unfair, unlawful, and not in the public interest:

(1) The payment, allowance, or acceptance of secret rebates, secret refunds, or unearned discounts by a person, whether in the form of money or otherwise.

(2) The giving of milk, cream, dairy products, services, or articles of any kind, except to bona fide charities, for the purpose of securing or retaining the fluid milk or fluid cream business of a customer.

(3) The extension to certain customers of special prices or services not available to all customers who purchase milk of like quantity under like terms and conditions.

(4) The purchasing, processing, bottling, packaging, transporting, delivering or otherwise handling in any marketing area of milk which is to be or is sold or otherwise disposed of at less than the minimum wholesale and minimum retail prices established by the board.

(5) The payment of a price lower than the applicable producer price, established by the board, by a distributor to a producer for milk which is distributed to any person, including agencies of the federal, state or local government.

History: En. Sec. 14, Ch. 204, L. 1939; amd. Sec. 8, Ch. 192, L. 1959; amd. Sec. 98, Ch. 431, L. 1975.

Amendments

The 1975 amendment deleted "In addition to the general and special powers heretofore set forth" at the beginning of the section; substituted "department" for "board" at the beginning of the first sentence; deleted "and regulations" after "reasonable rules" in the first sentence; substituted "chapter" for "act" in the first sentence; substituted "Those rules" for "Such reasonable rules and regulations governing fair trade practices" at the beginning of the second sentence; substituted "provisions prohibiting" for "provisions regarding" in the second sentence; redesignated former subdivisions (a) to (e) as subdivisions (1) to (5); deleted "pursuant to this act" at the end of sub-

division (4) and after "established by the board" in subdivision (5); and made minor changes in phraseology and punctuation.

Promotional Schemes

Contest awarding college scholarships to winning applicants was not prohibited by this section where applicants were not required to purchase dairy products in order to participate and contest did not directly or indirectly affect the price of milk charged by the dairy or paid by its customers; promotional scheme intended to draw noncustomers into purchasing a dairy's milk products is not prohibited by this section unless the contest affects the price of milk charged by the dairy or paid by its customers. *Jersey Creamery, Inc. v. Board of Milk Control of the Montana Department of Business Regulation*, 160 M 249, 502 P 2d 30.

27-414.1. Limitation on extension of credit to retailers. A sale or delivery may not be made by a producer-distributor, distributor, or jobber to a retailer, except for cash or payment within fifteen (15) days after regular billings, and all producer-distributors, distributors, and jobbers shall bill retailers at least monthly. A producer-distributor, distributor, or jobber may not extend more than fifteen (15) days' credit after billing to a retailer. A retailer may not receive delivery of milk without agreement to pay for it in cash within fifteen (15) days after regular billing. A correctly dated check which is honored upon presentment is cash within the meaning of this section. An extension or acceptance of credit in violation of this section shall be construed as rendering or receiving financial

assistance. The licenses of producer-distributors, distributors, or jobbers involved in violation of this section shall be suspended or revoked as determined by the department in its discretion.

History: En. Sec. 8, Ch. 107, L. 1971; amd. Sec. 99, Ch. 431, L. 1975.

Title of Act

An act to amend and add new sections to the Montana Milk Control Law; amending section 27-403, R. C. M. 1947, relating to definitions, by adding definitions thereto; amending section 27-406, R. C. M. 1947, relating to markets, by removing the requirement there be at least five (5) natural marketing areas in the state; amending section 27-407, relating to minimum prices, to provide for flexible price formulas and to specify how base plans may be established and under what circumstances area-wide or state-wide pooling arrangements may be adopted; amending sections 27-408, 27-409, and 27-410, relating to licensing, to include jobbers and imported milk within the jurisdiction of the milk control board; amending sec-

tion 27-411, R. C. M. 1947, to provide that civil penalties may be assessed by the milk control board in lieu of suspension or revocation of license; repealing section 27-427, R. C. M. 1947, relating to local advisory boards; adding new sections to provide a time limitation on credit which may be extended to retailers and to prohibit financing of producers and retailers by distributors; providing for severability if any part of this act is determined unconstitutional; and repealing all acts and parts of acts in conflict herewith.

Amendments

The 1975 amendment substituted references to this section for references to this act throughout the section; substituted "department" for "board" in the sixth sentence; and made minor changes in phraseology, punctuation and style.

27-414.2. Financing prohibitions—producer and retailer. (1) A producer, producer-distributor, distributor, or jobber licensed under this chapter may not advance or loan money or credit to, or furnish money or credit for, or refinance or cosign or guarantee promissory notes, security agreements, conditional sales contracts, or other commercial paper for or on behalf of a retailer. A producer, producer-distributor, distributor, or jobber may not be financially interested, either directly or indirectly, in the conduct or operation of the business of a retailer. A producer-distributor, distributor, or jobber licensed under this chapter may not advance or loan money or credit to, or furnish money or credit for, or refinance or cosign or guarantee promissory notes, security agreements, conditional sales contracts or other commercial paper for or on behalf of a producer. A producer-distributor, distributor, or jobber may not be financially interested, either directly or indirectly, in the conduct or operation of the business of a producer. This section does not prohibit a producer from belonging to, participating in, or patronizing a co-operative corporation or a producer, producer-distributor, distributor, or jobber from operating his own wholly owned dairy products or other retail store or home delivery retail routes.

(2) This section does not prohibit a producer from requesting and a distributor from granting an advance payment for milk before the regular date of payment for milk or limit in any way the right of a producer to assign part or all of moneys which are or may become due to him from a distributor.

History: En. Sec. 9, Ch. 107, L. 1971; amd. Sec. 100, Ch. 431, L. 1975.

Amendments

The 1975 amendment inserted the subsection designations; substituted "this chapter" for "this act" in the first and

third sentences of subsection (1); and made numerous minor changes in style, punctuation and phraseology.

Severability Clause

Section 11 of Ch. 107, Laws 1971 read "If any section, subdivision, sentence or

word of this act shall be determined by a court of competent jurisdiction to be unconstitutional or inoperative, such determination shall not affect the remaining portions of this act."

Repealing Clauses

Section 10 of Ch. 107, Laws 1971 read "Section 27-427, R.C.M. 1947, is repealed."

Section 12 of Ch. 107, Laws 1971 repealed all acts and parts of acts in conflict therewith.

27-415. Entry, inspection and investigation. The department may enter, at all reasonable hours, all places where milk is produced, processed, bottled, handled or stored, or where the books, papers, records, or documents relative to those transactions are kept and may inspect and copy them in any place in this state. The department may administer oaths, and take testimony for the purpose of ascertaining facts which, in the judgment of the department, are necessary to administer this chapter.

History: En. Sec. 15, Ch. 204, L. 1939; amd. Sec. 6, Ch. 4, L. 1967; amd. Sec. 101, Ch. 431, L. 1975.

Amendments

The 1975 amendment divided the section into two sentences; substituted "department" for references to the board

throughout the section; deleted "or any person designated for that purpose by the board, shall have access to, and" after "department" at the beginning of the first sentence; substituted "chapter" for "act" at the end of the section; and made minor changes in phraseology and punctuation.

27-416. Reports of dealers—accounting system—records. (1) The department may require licensees to file with it reports at reasonable or regular times which the department may require, showing the licensee's production, sale, or distribution of milk, and any information considered by the department necessary which pertains to the production, sale, or distribution of milk, either under oath or otherwise, as the department may direct. Failure or refusal to file a report when directed to do so is grounds for the revocation of the license and is a violation for which the licensee may be fined as provided by this chapter, one or both, at the discretion of the department.

(2) The department shall adopt a uniform system of accounting to be used by the distributor to account for the usage of all milk received by the distributor.

(3) A distributor and producer-distributor shall keep:

(a) A record of all milk, cream, or dairy products received, detailed as to location, names and addresses of suppliers, prices paid, and deductions or charges made, and the use to which the milk or cream was put;

(b) A record of the quantity of each kind of milk or dairy product manufactured and the quantity and price of milk or dairy products sold;

(c) A complete record of all milk, cream, or dairy products sold, classified as to kind and grade, showing where sold, and the amount received in payment;

(d) A record of the wastage or loss of milk or dairy products;

(e) A record of the items of handling expense;

(f) A record of all refrigeration facilities sold for storage purposes to any person, showing types, sizes, and location of the facilities, and the original, or duplicate original, of all agreements covering sales for them;

(g) Other records which the department considers necessary for the proper enforcement of this chapter.

History: En. Sec. 16, Ch. 204, L. 1939; amd. Sec. 9, Ch. 192, L. 1959; amd. Sec. 102, Ch. 431, L. 1975.

Amendments

The 1975 amendment inserted the subsection designations; substituted references to the department for references to the board throughout the section; substituted references to this chapter for

references to the act throughout the section; deleted "rented or" before "sold" in subdivision (3)(f); substituted "sales for them" for "rental charges therefor" at the end of subdivision (3)(f); deleted former subdivisions (g) and (h); redesignated former subdivision (i) as subdivision (3)(g); and made numerous minor changes in phraseology, punctuation and style. For prior version, see parent volume.

27-417. Disposition of fines. (1) All fines assessed by a court for violation of this chapter shall be paid by the court to the department.

(2) All fines received by the department shall be deposited with the state treasurer and shall be placed by him in the earmarked revenue fund. Fines assessed for violations of this chapter are earmarked for the purposes of this chapter.

History: En. Sec. 17, Ch. 204, L. 1939; amd. Sec. 158, Ch. 147, L. 1963; amd. Sec. 103, Ch. 431, L. 1975.

Amendments

The 1975 amendment inserted the subsection designations; substituted "this

chapter" for "this act" throughout the section; substituted references to the department for references to the milk control board throughout the section; deleted "or its properly designated agent" at the end of subsection (1); and made minor changes in phraseology.

27-418. Repealed.

Repeal

Section 27-418 (Sec. 18, Ch. 204, L. 1939), relating to formation of local dairy-

men's associations, was repealed by Sec. 176, Ch. 431, Laws 1975.

27-420. Repealed.

Repeal

Section 27-420 (Sec. 20, Ch. 204, L. 1939), relating to board hearings and at-

tendance fees, was repealed by Sec. 176, Ch. 431, Laws 1975.

27-421. Co-operation with other governmental agencies. In order to secure a uniform system of milk control, the department shall confer and co-operate with the proper authorities of other states and of the United States, including the secretary of agriculture of the United States, and, for those purposes, the department may conduct joint hearings, issue joint or concurrent orders and exercise all its powers under this chapter.

History: En. Sec. 21, Ch. 204, L. 1939; amd. Sec. 104, Ch. 431, L. 1975.

Amendments

The 1975 amendment substituted "de-

partment" for "board" in two places; substituted "this chapter" for "this act" at the end of the section; and made minor changes in phraseology.

27-422. Violations made misdemeanors — penalties. (1) A person who produces, sells, distributes, or handles milk in any way, except as a consumer, without a license from the department as required by this chapter, or who violates a lawful rule of the department or board, is guilty of a misdemeanor punishable by a fine not exceeding six hundred dollars (\$600). Each day's violation is a separate offense.

(2) The district courts have original jurisdiction in all criminal actions for violations of this chapter, and in all civil actions for the recovery or enforcement of penalties, provided for in this chapter. All of those actions, both criminal and civil, shall be tried in the district court.

(3) The county attorneys, in their respective counties, shall diligently prosecute all violations of this chapter.

History: En. Sec. 22, Ch. 204, L. 1939; amd. Sec. 105, Ch. 431, L. 1975.

Amendments

The 1975 amendment redesignated subsections (a) to (c) as (1) to (3); substituted "chapter" for "act" throughout the section; deleted "required by this act to be licensed" after "person" at the beginning of subsection (1); inserted "or who violates a lawful rule of the department or board" in the first sentence of subsection (1); deleted from the end of subsection (1) a sentence which read "A violation of any provision of this act or of any lawful rule or order of the board, including a failure to answer subpoena or to

testify before the board, shall be deemed a misdemeanor punishable by fine not exceeding six hundred dollars (\$600.00), and each day during which such violation shall continue shall be deemed a separate violation"; substituted "penalties" for "fines" in subsection (2); deleted "and deputy county attorneys" after "county attorneys" in subsection (3); substituted "prosecute all violations of this chapter" at the end of subsection (3) for "attend to all inquisitions held under the provisions of this act and diligently to prosecute all violations of the laws of this state relating to the provisions of this act"; and made minor changes in phraseology.

27-423. Constructions, exceptions and limitations. (1) The license required by this chapter is in addition to any other license required by state law or any municipality of this state. This act shall apply to every part of the state of Montana.

If any portion of this chapter is held invalid or unconstitutional, the holding does not affect the validity of the chapter as a whole, or any part of it which can be given effect without the part so held to be unconstitutional or invalid.

(2) This chapter does not apply to foreign or interstate commerce except in so far as it may be effective in compliance with the United States constitution, and with the laws of the United States. It is the intention of the legislature, however, that the instant, whenever that may be, that the handling, within the state by a dealer, of milk produced outside of the state, becomes the subject of regulation by the state in the exercise of its police powers, the provisions of this chapter, affecting intrastate milk, immediately apply and the powers conferred by this chapter attach thereto.

History: En. Sec. 23, Ch. 204, L. 1939; amd. Sec. 106, Ch. 431, L. 1975.

section designations; substituted "chapter" for "act" throughout the section; and made minor changes in phraseology.

Amendments

The 1975 amendment inserted the sub-

27-424. Additional remedies. The department may begin any proceeding at law or in equity as may appear necessary to enforce compliance with this chapter or to enforce compliance with an order or rule of the board or department adopted under this chapter or to obtain a judicial interpretation of any of them. In addition to any other remedy, the department may apply to the district court of the district where the action arises, for relief by injunction, mandamus, or any other appropriate remedy in equity without being compelled to allege or prove that an adequate remedy at law does not otherwise exist. The department may not be re-

quired to post bond in an action to which it is a party whether upon appeal or otherwise. All legal actions may be brought by or against the board or department in the name of the department of business regulation and it is not necessary in an action to which the department is a party that the action be brought by or against this state on relation of the department. The department may sue by its own attorney and it may also call upon a county attorney to represent it in the district court of his county, or the attorney general to represent it on appeal to the supreme court, or it may associate its own attorney with either in any court.

History: En. Sec. 24, Ch. 204, L. 1939; amd. Sec. 107, Ch. 431, L. 1975.

Amendments

The 1975 amendment substituted references to the department for references to the milk control board throughout the section; substituted "chapter" for "act" in two places in the first sentence; substituted "order or rule of the board or department" in the first sentence for "order,

rule or regulation, of the board"; deleted "after unanimous consent of all members" after "the department" in the second sentence; substituted "against the board or department" for "against the board" in the fourth sentence; substituted "the department of business regulation" for "the Montana milk control board" in the fourth sentence; and made minor changes in phraseology and punctuation.

27-425. Repealed.

Repeal

Section 27-425 (Sec. 25, Ch. 204, L. 1939), relating to the transfer of assets of

the former milk control board, was repealed by Sec. 176, Ch. 431, Laws 1975.

27-426. Bonds required of distributors—amounts—forms and conditions. (1) A distributor before purchasing milk from a producer shall deliver to the department a surety bond of not less than one thousand dollars (\$1,000), executed by the distributor as principal and by a surety company authorized to do business in this state as surety. The bond shall be on a form approved by the department and shall be conditioned upon the payment, in the manner required by this chapter, of all amounts due to producers for milk purchased by the distributor during the license year. The bond shall be to the state in favor of every producer of milk. In case of failure by a distributor to pay a producer for milk in the manner required by this chapter, the department shall proceed immediately to ascertain the names and addresses of all producer-creditors of that distributor, together with the amounts due them and shall request all those producer-creditors to file a verified statement of their respective claims. The department shall then sue on the bond on behalf of the producer-creditors. Upon suing on the bond, the department may require the filing of a new bond; and immediately upon a recovery in an action upon the bond, the distributor shall file a new bond. Upon failure to file a new bond within ten (10) days in either case, the failure is grounds for the revocation or suspension of the license of the distributor. If recovery on the bond is not sufficient to pay all of the claims as finally determined by the court, the amount recovered shall be divided pro rata among the producer-creditors.

(2) The minimum bond of one thousand dollars (\$1,000) shall be required of distributors purchasing an average daily quantity of milk of less than one hundred (100) gallons; distributors purchasing an average

daily quantity of one hundred (100) gallons and less than two hundred (200) gallons during any calendar month during a license year shall post a bond in the amount of two thousand dollars (\$2,000); distributors purchasing an average daily quantity of two hundred (200) gallons and less than three hundred (300) gallons during any calendar month during a license year shall post a bond in the amount of three thousand dollars (\$3,000); distributors purchasing an average daily quantity of three hundred (300) gallons or more during any calendar month during a license year shall post a bond in the sum of five thousand dollars (\$5,000).

(3) If a distributor increases his purchases of milk during the license year to exceed the amount for which he is bonded, he shall immediately post the additional bond required to comply with this section.

(4) The department may require a distributor to furnish a bond in addition to those specified in this section, if, after notice and hearing and upon good cause shown, it determines the additional bond is required to assure payment of all amounts due or to become due to producers.

(5) Failure of a distributor who purchases milk from producers to post a bond required by this section is a violation of this chapter.

History: En. Sec. 10, Ch. 192, L. 1959; amd. Sec. 7, Ch. 4, L. 1967; amd. Sec. 108, Ch. 431, L. 1975.

numerous minor changes in phraseology and style.

Amendments

The 1975 amendment inserted the subsection designations; substituted references to the department for references to the milk control board throughout the section; substituted references to this chapter for references to this act throughout the section; deleted "failure of any such distributor to post such additional bond or bonds as may be required to comply with the provisions of this act shall likewise constitute violation of this act" at the end of subsection (5); and made

Accrual of Cause of Action

Three-year statute of limitations provided under section 93-2607 did not bar action on milk distributor's bond where distributor had pursued administrative and court proceedings in intervening three-year period and surety had knowledge of earlier proceedings since cause of action did not accrue until plaintiff had right of action and plaintiff had no right of action until administrative remedies had been exhausted. *Montana Milk Control Board v. Hartford Accident & Indemnity Co.*, 153 M 299, 456 P 2d 302.

27-427. Repealed.

Repeal

Section 27-427 (Sec. 11, Ch. 192, L. 1959), relating to local advisory boards, was repealed by Sec. 10, Ch. 107, Laws 1971, and by Sec. 2, Ch. 272, Laws 1971.

The repeal by Ch. 272 was implemented by Executive Reorganization Order 7-71, signed by the Governor on November 11, 1971, effective November 15, 1972.

27-428, 27-429. Repealed.

Repeal

Sections 27-428 and 27-429 (Secs. 12, 13, Ch. 192, L. 1959), relating to judicial re-

view of milk control board orders, and service of process upon the board, were repealed by Sec. 176, Ch. 431, Laws 1975.

27-430. Testing of milk. (1) For the purpose of determining the value of milk supplied by producers during routine audits of milk processing plants which receive raw milk directly from producers, the department of business regulation shall establish a program of testing such raw milk.

(2) The department of business regulation may levy an assessment on licensed producers to secure the necessary funds to administer this program. This assessment is in addition to those provided in 27-409.

(3) All personnel employed in the sampling and testing program shall be licensed by the animal health division of the department of livestock.

(4) The department may conduct all types of sampling, grading, and testing techniques which it considers necessary to carry out the intent of this section.

History: En. 27-430 by Sec. 1, Ch. 245, L. 1977.

Title of Act

An act to require testing of milk by the department of business regulation to determine the value of raw milk.

CHAPTER 5—OLEOMARGARINE

(Repealed—Section 9, Chapter 99, Laws of 1953; Section 1, Chapter 286, Laws of 1973)

27-501 to 27-503. Repealed.

Repeal Sections 27-501 to 27-503 (Secs. 1 to 3, Ch. 138, L. 1949; Secs. 1, 2, Ch. 99, L.	1953), relating to oleomargarine products, were repealed by Sec. 1, Ch. 286, Laws 1973.
--	---

27-505. Repealed.

Repeal Section 27-505 (Sec. 5, Ch. 138, L. 1949), relating to district court jurisdiction of	violations of the oleomargarine act, was repealed by Sec. 1, Ch. 286, Laws 1973.
--	--

27-507 to 27-523. Repealed.

Repeal Sections 27-507 to 27-523 (Secs. 7 to 20, Ch. 138, L. 1949; Secs. 3, 4, 7, Ch. 99, L.	1953), relating to regulation of oleomargarine products, were repealed by Sec. 1, Ch. 286, Laws 1973.
--	---

CHAPTER 6—FOOD SERVICE ESTABLISHMENTS, MARKETS AND MANUFACTURERS

Section

- 27-612. Definition of terms.
- 27-614. Application for license—fee.
- 27-615. Cancellation or denial of license—procedure.
- 27-615.2. Injunctions.

27-612. Definition of terms. Unless the context requires otherwise, in this act:

(1) “Food” means an edible substance, beverage, or ingredient used, intended for use, or for sale for human consumption.

(2) “Food manufacturing establishment” means a commercial establishment, and buildings or structures in connection with it, used to manufacture or prepare food for sale or human consumption, but does not include milk producers’ facilities, milk pasteurization facilities, milk product manufacturing plants, slaughterhouses, or meat packing plants.

(3) “Meat market” means a commercial establishment, and buildings or structures in connection with it, used to process, store, or display meat or meat products for sale to the public or for human consumption.

(4) "Food service establishment" means a fixed or mobile restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grill, tearoom, sandwich shop, soda fountain, food store serving food or beverage samples, food or drink vending machine, tavern, bar, cocktail lounge, night club, industrial feeding establishment, catering kitchen, commissary, private organization routinely serving the public, or similar place where food or drink is prepared, served, or provided to the public with or without charge. The term does not include establishments, vendors, or vending machines which sell or serve only packaged nonperishable foods in their unbroken original containers, or a private organization serving food only to its members.

(5) "Frozen food plant" means a place used to freeze, process, or store food including facilities used in conjunction with the frozen food plant and a place where individual compartments are offered to the public on a rental or other basis.

(6) "Person" means a person, partnership, corporation, association, cooperative group, or other entity engaged in operating, owning, or offering services of an establishment.

(7) "Establishment" means a food manufacturing establishment, meat market, food service establishment, frozen food plant, commercial food processor, or perishable food dealer.

(8) "State board" means the board of health and environmental sciences, provided for in section 82A-605.

(9) "Department" means the department of health and environmental sciences, provided for in Title 82A, chapter 6.

(10) "Perishable food dealer" means a person or commercial establishment which is in the business of purchasing and selling perishable food to the public.

History: En. Sec. 2, Ch. 17, L. 1967; amd. Sec. 1, Ch. 130, L. 1971; amd. Sec. 1, Ch. 349, L. 1974.

Amendments

The 1971 amendment substituted "an establishment as included in this section" at the end of subdivision (6) for "a food manufacturing establishment, meat market, food service establishment, or frozen food plant"; added "or perishable food dealer" at the end of subdivision (7); and added subdivision (11), now subdivision (10).

The 1974 amendment deleted "as included in this section" from the end of sub-

division (6); substituted "board of health and environmental sciences, provided for in section 82A-605" in subdivision (8) for "state board of health"; substituted "department of health and environmental sciences, provided for in Title 82A, chapter 6" in subdivision (9) for "state department of health"; deleted former subdivision (10) reading "Executive officer" means the director of the state department of health"; redesignated former subdivision (11), "Perishable food dealer," as subdivision (10); and made minor changes in punctuation and phraseology.

27-613. Licenses required, etc.

Compiler's Notes

Section 107, Ch. 394, Laws 1974, sub-

stituted "department" in this section for "state board."

27-614. Application for license—fee. (1) * * * [Same as parent volume.]

(2) For each license issued, the department shall collect a fee of twenty dollars (\$20). It shall deposit receipts in the state general fund.

(3) Before June 30 of each year, the department shall pay to a local

board of health as established under section 69-4504, 69-4506, or 69-4507, R. C. M. 1947, an amount from any general fund appropriation to the department which is for the purpose of inspecting establishments licensed under this act; provided, however, that there is a functioning local board of health, and that the local board of health, local health officers, and sanitarians assist in the enforcement of the provisions of this chapter and the rules adopted under it.

(4) Before June 1 of each year, the local board of health shall submit to the department a list of the establishments in each jurisdiction that are licensed under this chapter. The funds received by the local board of health shall be deposited with the appropriate local fiscal authority and shall be in addition to the funds appropriated under section 69-4508, R. C. M. 1947.

History: En. Sec. 4, Ch. 17, L. 1967; amd. Sec. 1, Ch. 48, L. 1973; amd. Sec. 1, Ch. 508, L. 1975.

The 1975 amendment increased the license fee in subsection (2) from \$10 to \$20; and added subsections (3) and (4).

Amendments

The 1973 amendment increased the license fee in subsection (2) from \$5.00 to \$10.00.

Effective Date

Section 5 of Ch. 508, Laws 1975 read "This act is effective January 1, 1976."

27-615. Cancellation or denial of license—procedure. (1) The department may cancel a license if it finds, after proper investigation, that the licensee has violated this chapter or a rule effective under this chapter, and the licensee has failed or refused to remedy or correct the violation. Submission to the department of an acceptable plan of correction within ten (10) days after receipt from the department of written notice of violation, and execution of an acceptable plan within the time prescribed in the written notice of approval of the plan by the department shall be a bar to prosecution for violation.

(2) A license may not be denied or canceled by the department without delivery to the applicant or licensee of a written statement of the grounds for cancellation or denial or the charge involved and an opportunity to answer at a hearing before the department to show cause, if any, why the license should not be denied or canceled. In such case, the licensee must make a written request to the department for a hearing within ten (10) days after notice of the grounds or charges has been received.

(3) When a multiple type establishment is licensed by the department, the denial or cancellation of the license may affect the entire establishment or only a portion of it as determined by the department. (A multiple type establishment includes an establishment authorized by section 27-613(2).)

(4) On cancellation of a license or the right to operate one or more of the multiple type establishments under the same license, the license certificate shall be returned to the department for destruction or deletion of types of establishment as the department may direct in its notice of cancellation.

(5) When the department furnishes evidence to the county attorney

of a county in this state, the county attorney shall prosecute any person, firm, or corporation violating this chapter, or a rule effective under this chapter.

History: En. Sec. 5, Ch. 17, L. 1967; amd. Secs. 107, 111, Ch. 349, L. 1974; amd. Sec. 2, Ch. 508, L. 1975.

Amendments

The 1974 amendment substituted "department" throughout this section for "executive officer" and "state board."

The 1975 amendment completely rewrote this section. For prior version, see parent volume and 1974 amendment note.

Effective Date

Section 5 of Ch. 508, Laws 1975 read "This act is effective January 1, 1976."

27-615.2. Injunctions. Notwithstanding any other provision of this act the department, local, county, or district health officer or sanitarian may bring an action for an injunction against the continuation of an alleged violation of this act.

History: En. 27-615.2 by Sec. 3, Ch. 508, L. 1975.

Title of Act

An act to amend section 27-614, R. C. M. 1947, by providing a twenty dollar (\$20) license fee for food establishments and participation in the fee by local boards of health; amending section 27-615, R. C. M. 1947, by providing the procedure for cancellation or denial of a food establishment license; providing for injunction;

repealing sections 27-616 and 27-617, R. C. M. 1947; and providing a delayed effective date.

Repealing Clause

Section 4 of Ch. 508, Laws 1975 read "Sections 27-616 and 27-617, R. C. M. 1947, are repealed."

Effective Date

Section 5 of Ch. 508, Laws 1975 read "This act is effective January 1, 1976."

27-616, 27-617. Repealed.

Repeal

Sections 27-616 and 27-617 (Secs. 6, 7, Ch. 17, L. 1967; Sec. 2, Ch. 349, L. 1974), relating to notice of denial or cancellation

of food service establishment licenses, and corrective plans for unlawful conditions, were repealed by Sec. 4, Ch. 508, Laws of 1975, eff. Jan. 1, 1976.

27-618. Repealed.

Repeal

Section 27-618 (Sec. 8, Ch. 17, L. 1967), relating to appeal from the state board to

the district court, was repealed by Sec. 113, Ch. 349, Laws of 1974.

27-620, 27-621.

Compiler's Notes

Section 107, Ch. 349, Laws 1974, sub-

stituted "department" throughout these sections for "state board."

27-625. Violation as misdemeanor—penalties.

Compiler's Notes

Section 107, Ch. 349, Laws 1974, sub-

stituted "department" in this section for "state board."

CHAPTER 7—FOOD, DRUG AND COSMETIC ACT

Section	
27-702.	Definition of terms.
27-703.	Prohibited acts enumerated.
27-706.	Detention or embargo of adulterated or misbranded articles—condemnation proceedings—immediate abatement of nuisances.
27-707.	Proceedings to be instituted and prosecuted without delay—defendant's right to be heard by department.
27-721.	Adopting rules—hearings.
27-722.	Inspections and taking of samples authorized.

27-702. Definition of terms. Unless the context requires otherwise, in this act:

(a) "State board" or "board" means the board of health and environmental sciences, provided for in section 82A-605.

(b) "Department" means the department of health and environmental sciences, provided for in Title 82A, chapter 6.

(c) "Person" includes an individual, partnership, corporation, and association.

(d) "Food" means:

(1) Articles used for food or drink for man or other animals;

(2) Chewing gum; and

(3) Articles used for components of these articles.

(e) "Drug" means:

(1) Articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or a supplement to any of these;

(2) Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(3) Articles (other than food) intended to affect the structure or function of the body of man or other animals;

(4) Articles intended for use as a component of any article specified in clause (1), (2) or (3); but does not include devices or their components, parts or accessories.

(f) "Device" (except when used in subsection (1) of this section and in sections 27-703 (j), 27-711 (f), 27-715 (c) and (o) and 27-719 (c)) means instruments, apparatus, and contrivances, including their components, parts, and accessories, intended:

(1) For use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(2) To affect the structure or function of the body of man or other animals.

(g) "Cosmetic" means:

(1) Articles intended to be rubbed, poured, sprinkled, sprayed on, introduced into, or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance;

(2) Articles intended for use as a component of these articles, except that the term does not include soap.

(h) "Official compendium" means the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or a supplement to any of these.

(i) "Label" means a display of written, printed, or graphic matter on the immediate container of an article; and a requirement made by or under authority of this act that a word, statement, or other information appearing on the label shall not be considered to be complied with unless the word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of the article, or is easily legible through the outside container or wrapper.

(j) "Immediate container" does not include package liners.

(k) "Labeling" means labels and other written, printed, or graphic matter:

(1) On an article or its containers or wrappers;

(2) Accompanying the article.

(l) If an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading there shall be taken into account not only representations made or suggested by statement, word, design, device, sound, or a combination of these, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of the representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement or under conditions of use as are customary or usual.

(m) "Advertisement" means representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics.

(n) The representation of a drug, in its labeling or advertisement, as an antiseptic is considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or other use which involves prolonged contact with the body.

(o) "New drug" means:

(1) A drug the composition of which is such that it is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in its labeling; or

(2) A drug the composition of which is such that the drug, as a result of investigations to determine its safety and effectiveness for use under the conditions prescribed, has become so recognized, but which has not, otherwise than in the investigations, been used to a material extent or for a material time under the conditions prescribed.

(p) "Contaminated with filth" applies to a food, drug, device, or cosmetic not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from foreign or injurious contaminations.

(q) The provisions of this act regarding the selling of food, drugs, devices, or cosmetics, shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of these articles for sale; the sale, dispensing, and giving of these articles; and the supplying or applying of these articles in the conduct of a food, drug, or cosmetic establishment.

(r) "Pesticide chemical" means a substance which, alone, in chemical combination, or in formulation with one (1) or more other substances is an "economic poison" under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C., secs. 135-135k), as amended, and which is used in the production, storage, or transportation of raw agricultural commodities.

(s) "Raw agricultural commodity" means food in its raw or natural state, including fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

(t) "Food additive" means a substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of food (including a substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including a source of radiation intended for this use), if the substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use; except that this term does not include:

(1) A pesticide chemical in or on a raw agricultural commodity;

(2) A pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of a raw agricultural commodity;

(3) A color additive;

(4) A substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the Federal Act; the Poultry Products Inspection Act (21 U.S.C. 451 et seq.); or the Meat Inspection Act of March 4, 1907 (34 Stat. 1260), as amended and extended (21 U.S.C. 71 et seq.).

(u) (Color and color additive)

(1) "Color additive" means a material which:

(A) Is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity from a vegetable, animal, mineral, or other source; or

(B) When added or applied to a food, drug, or cosmetic, or to the human body is capable (alone or through reaction with other substance)

of imparting color thereto; except that this term does not include material which has been or hereafter is exempted under the Federal Act.

(2) "Color" includes black, white, and intermediate grays.

(3) Subsection (u) does not apply to a pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly the growth or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest.

(v) "Federal Act" means the Federal Food, Drug and Cosmetic Act, as amended (Title 21 U.S.C. 301 et seq.).

(w) "Counterfeit drug" means a drug which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, or device, or any likeness thereof, of a drug manufacturer, processor, packer, or distributor other than the person who in fact manufactured, processed, packed, or distributed the drug and which falsely purports or is represented to be the product of, or to have been packed or distributed by the other drug manufacturer, processor, packer, or distributor.

(x) "Consumer commodity," except as otherwise specifically provided by this subsection, means any food, drug, device, or cosmetic as those terms are defined by this act or by the Federal Act and regulations pursuant thereto. The term does not include:

(1) Any tobacco or tobacco product;

(2) A commodity subject to packaging or labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the Act of March 4, 1913 (37 Stat. 832-833; 21 U.S.C. 151-157), commonly known as the Virus-Serum Toxin Act;

(3) A drug subject to section 17 (a) (B) or 16 (k) of this act, or section 503 (b) (1) or 506 of the Federal Act;

(4) A beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C., 201 et seq.); or

(5) A commodity subject to the Federal Seed Act (7 U.S.C. 1551-1610).

(y) "Principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

(z) "Package" means a container or wrapping in which a consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers, but does not include:

(1) Shipping containers or wrappings used solely for the transportation of a consumer commodity in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors;

(2) Shipping containers or outer wrappings used by retailers to ship or deliver a commodity to retail customers if the containers and wrappings bear no printed matter pertaining to a particular commodity.

(A) The term "honey" means the nectar and saccharine exudations of plants, gathered, modified and stored in the comb by honey bees; is levorotatory, contains not more than twenty-five per cent (25%) of water, not more than twenty-five hundredths per cent (.25%) of ash, and not more than eight per cent (8%) sucrose.

History: En. Sec. 2, Ch. 307, L. 1967; amd. Sec. 1 Ch. 171, L. 1971; amd. Sec. 1, Ch. 114, L. 1974; amd. Sec. 3, Ch. 349, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 114 and once by Ch. 349. Neither amendatory act mentioned nor incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1971 amendment added subdivisions

(w), (x), (y) and (z), and made minor changes in punctuation and style.

Chapter 114, Laws of 1974, added subdivision (A), defining the term "honey."

Chapter 349, Laws of 1974, inserted "or board" and substituted "board of health and environmental sciences, provided for in section 82A-605" for "Montana state board of health" in subdivision (a); substituted "department of health and environmental sciences, provided for in Title 82A, chapter 6" for "Montana state department of health" in subdivision (b); and made changes in phraseology, punctuation, and style throughout the section.

27-703. Prohibited acts enumerated. The following acts and the causing thereof within the state of Montana are hereby prohibited:

(1) The manufacture, sale or delivery, holding or offering for sale of any food, drug, device, or cosmetic that is adulterated or misbranded.

(2) The adulteration or misbranding of any food, drug, device, or cosmetic.

(3) The receipt in commerce of any food, drug, device, or cosmetic that is adulterated or misbranded and the delivery or proffered delivery thereof for pay or otherwise.

(4) The sale, delivery for sale, holding for sale, or offering for sale of any article in violation of 27-712 or 27-717.

(5) The dissemination of any false advertisement.

(6) The refusal to permit entry or inspection or to permit the taking of a sample, as authorized by 27-722.

(7) The giving of a guaranty or undertaking which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by and containing the name and address of the person residing in the state of Montana from whom he received in good faith the food, drug, device, or cosmetic.

(8) The removal or disposal of a detained or embargoed article in violation of 27-706.

(9) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of or the doing of any other act with respect to a food, drug, device, or cosmetic, if such act is done while such article is held for sale and results in such article being adulterated or misbranded.

(10) Forging, counterfeiting, simulating, or falsely representing or, without proper authority, using any mark, stamp, tag, label, or other

identification device authorized or required by regulations promulgated under the provisions of this act or of the federal act.

(11) The using, on the labeling of any drug or in any advertisement relating to such drug, of any representation or suggestion that an application with respect to such drug is effective under 27-717 or that such drug complies with the provisions of such section.

(12) In the case of a prescription drug distributed or offered for sale in this state, the failure of the manufacturer, packer, or distributor thereof to maintain for transmittal or to transmit to any practitioner licensed by applicable law to administer such drug who makes written request for information as to such drug, true and correct copies of all printed matter which is required to be included in any package in which that drug is distributed or sold, or such other printed matter as is approved under the federal act. Nothing in this paragraph shall be construed to exempt any person from any labeling requirement imposed by or under other provisions of this act.

(13) (Counterfeiting trade-marks).

(a) Placing or causing to be placed upon any drug or device or container thereof, with intent to defraud, the trade name or other identifying mark or imprint of another or any likeness of any of the foregoing; or

(b) Selling, dispensing, disposing of, or causing to be sold, dispensed, or disposed of or concealing or keeping in possession, control, or custody, with intent to sell, dispense, or dispose of any drug, device, or any container thereof, with knowledge that the trade name or other identifying mark or imprint of another or any likeness of any of the foregoing has been placed thereon in a manner prohibited by subsection (a) hereof; or

(c) Making, selling, disposing of, or causing to be made, sold, or disposed of or keeping in possession, control, or custody or concealing, with intent to defraud, any punch, die, plate, or other thing designed to print, imprint, or reproduce that trade name or other identifying mark or imprint of another or any likeness of any of the foregoing upon any drug, device, or container thereof.

(14) The using by any person to his own advantage or revealing, other than to the state board, officers or employees of the department, or to the courts when relevant in any judicial proceeding under this act, any information acquired under authority of this act concerning any method or process which as a trade secret is entitled to protection.

(15) The distribution in commerce of a consumer commodity, as defined in this act, if such commodity is contained in a package or if there is affixed to that commodity a label which does not conform to the provisions of this act and of regulations promulgated under authority of this act. This prohibition does not apply to persons engaged in business as wholesale or retail distributors of consumer commodities except to the extent that such persons:

(a) are engaged in the packaging or labeling of such commodities; or

(b) prescribe or specify by any means the manner in which such commodities are packaged or labeled.

(16) The labeling or packaging of a food, drug, or cosmetic which fails to conform with the requirements of this act.

(17) It is unlawful for any person to sell or offer for sale any product which is in semblance of honey and which is labeled, advertised, or otherwise represented to be honey, if it is not honey. Any product sold in semblance of honey which is a blend or mixture of honey and other ingredients must be labeled in such a way that the name of the main ingredient added to the honey will be printed so that it will be as prominent and conspicuous as the word honey. The word "imitation" may not be used in the name of a product which is in semblance of honey whether or not it contains any honey. The label for a product which is not in semblance of honey and which contains honey may include the word "honey" in the name of the product, and the relative position of the word "honey" in the product name and in the list of ingredients, when required, shall be determined by its prominence as an ingredient in the product.

History: En. Sec. 3, Ch. 307, L. 1967; amd. Sec. 2, Ch. 171, L. 1971; amd. Sec. 2, Ch. 114, L. 1974; amd. Sec. 9, Ch. 403, L. 1977.

Amendments

The 1971 amendment added subdivisions (p) and (q) and made minor changes in punctuation and style.

The 1974 amendment added subdivision (r); and made a minor change in punctuation.

The 1977 amendment redesignated subdivisions (a) through (m) as subdivisions (1) through (13); redesignated subdivisions (m)(1) through (m)(3) as subdivisions (13)(a) through (13)(c); deleted a former subdivision (n) as it appears in the parent volume; redesignated subdivisions (o) through (r) as subdivisions (14) through (17); redesignated subdivisions (p)(1) and (p)(2) as subdivisions (15)(a) and (15)(b); and made minor changes in phraseology, punctuation and style.

27-706. Detention or embargo of adulterated or misbranded articles—condemnation proceedings—immediate abatement of nuisances. (1) If an agent of the department finds or has probable cause to believe that any food, drug, device, or cosmetic is adulterated or so misbranded as to be dangerous or fraudulent within the meaning of this act, he shall affix to the article a tag or other appropriate marking giving notice that the article is or is suspected of being adulterated or misbranded and has been detained or embargoed and warning all persons not to remove or dispose of the article by sale or otherwise until permission for removal or disposal is given by the agent or the court. It is unlawful for a person to remove or dispose of a detained or embargoed article by sale or otherwise without permission.

(2) If an article detained or embargoed under subsection (1) is found by the agent to be adulterated or misbranded, he shall petition the justice of peace, city judge, or district court in whose jurisdiction the article is detained or embargoed for an order for condemnation of the article. If the agent finds that an article so detained or embargoed is not adulterated or misbranded, he shall remove the tag or other marking.

(3) If the court finds that a detained or embargoed article is adulterated or misbranded, the article shall, after entry of the decree, be destroyed at the expense of the claimant thereof under the supervision of the agent, and all court costs and fees and storage and other proper expenses shall be taxed against the claimant of the article or his agent. If the adulteration or misbranding can be corrected by proper labeling or processing of

the article, the court, after entry of the decree and after the costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that the article will be so labeled or processed, has been executed, may by order direct that the article be delivered to the claimant thereof for the labeling or processing under the supervision of an agent of the department. The expense of the supervision shall be paid by claimant. The article shall be returned to the claimant on the representation to the court by the department that the article is no longer in violation of this act and that the expenses of the supervision have been paid.

(4) Whenever the department or any of its authorized agents find in any room, building, vehicle of transportation, or other structure any meat, sea food, poultry, vegetable, fruit, or other perishable article which is unsound or contains any filthy, decomposed, or putrid substance or that may be poisonous or deleterious to health or otherwise unsafe, the article being hereby declared to be a nuisance, the department or its authorized agent shall immediately condemn or destroy the article or in any other manner render the article unsalable as human food.

History: En. Sec. 6, Ch. 307, L. 1967; amd. Sec. 1, Ch. 187, L. 1977.

Amendments

The 1977 amendment substituted num-

bers for letters in the subsection designations; substituted "city judge" for "police judge" near the middle of subsection (2); and made minor changes in style, punctuation and phraseology.

27-707. Proceedings to be instituted and prosecuted without delay—defendant's right to be heard by department. Each state attorney or county attorney to whom the department reports a violation of this act shall cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law. Before a violation of this act is reported to a state or county attorney for the institution of a criminal proceeding, the person against whom the proceeding is contemplated shall be given appropriate notice and an opportunity to present his views before the department or its designated agent, either orally or in writing and either in person or by attorney, with regard to the contemplated proceeding.

History: En. Sec. 7, Ch. 307, L. 1967; amd. Sec. 2, Ch. 187, L. 1977.

Amendments

The 1977 amendment made minor changes in phraseology.

27-709. Regulations establishing food standards, etc.

Compiler's Notes

Section 107, Ch. 349, Laws 1974, sub-

stituted "department" throughout this section for "state board."

27-711. Misbranded food defined.

Compiler's Notes

Section 107, Ch. 349, Laws 1974, sub-

stituted "department" throughout this section for "state board."

27-713. Additives to conform to regulations, etc.

Compiler's Notes

Section 107, Ch. 349, Laws 1974, sub-

stituted "department" throughout this section for "state board."

27-715 to 27-717.**Compiler's Notes**

Section 107, Ch. 349, Laws 1974, sub-

stituted "department" throughout these sections for "state board."

27-719, 27-720.**Compiler's Notes**

Section 107, Ch. 349, Laws 1974, sub-

stituted "department" in these sections for "state board."

27-721. Adopting rules—hearings. (1) The department may adopt rules for the efficient enforcement of this act. The department may adopt by reference the regulations adopted by the Food and Drug Administration under the Federal Act and the Fair Packaging and Labeling Act (15 U.S.C. 1451, et seq.).

(2) No hearing is required for adoption by reference of those regulations adopted under the Federal Act and the Fair Packaging and Labeling Act (15 U.S.C. 1451, et seq.).

History: En. Sec. 21, Ch. 307, L. 1967; amd. Sec. 3, Ch. 171, L. 1971; amd. Sec. 4, Ch. 349, L. 1974.

Amendments

The 1971 amendment added references to the Fair Packaging and Labeling Act at the end of subsection (a) and at the end of subsection (c).

The 1974 amendment substituted the first sentence of subsection (1) for one reading "The authority to promulgate regulations for the efficient enforcement of this act is hereby vested in the state board"; substituted "department" for "state board"

and "adopted" for "promulgated" in the second sentence of subsection (1); deleted a former second subsection reading "Hearings authorized or required by this act shall be conducted by the state board or such officer, agent or employee as the state board may designate for the purpose"; deleted from the beginning of subsection (2) three sentences, for which see subsection (c) in the parent volume; substituted "adoption" and "adopted" in subsection (2) for "promulgation" and "promulgated"; and made minor changes in style and phraseology.

27-722. Inspections and taking of samples authorized. (1) The department or its authorized agents have free access at all reasonable hours to any factory, warehouse, or establishment in which foods, drugs, devices, or cosmetics are manufactured, processed, packed, or held for introduction into commerce or to any vehicle being used to transport or hold the foods, drugs, devices, or cosmetics in commerce for the purpose:

(a) of inspecting the factory, warehouse, establishment, or vehicle to determine if any of the provisions of this act are being violated; and

(b) of securing samples or specimens of any food, drug, device, or cosmetic after paying or offering to pay for the sample.

(2) The department shall make or cause to be made examinations of samples secured under the provisions of this section to determine whether or not any provision of this act is being violated.

History: En. Sec. 22, Ch. 307, L. 1967; amd. Sec. 3, Ch. 187, L. 1977.

Amendments

The 1977 amendment inserted the subsection designations; and made minor changes in punctuation and phraseology.

27-724, 27-725. Repealed.**Repeal**

Sections 27-724 and 27-725 (Secs. 24, 25, Ch. 307, L. 1967), relating to the un-

lawful possession of hallucinogenic drugs and providing penalties therefor, were repealed by Sec. 14, Ch. 314, Laws 1969.

CHAPTER 8—FLOUR AND BREAD

Section

- 27-801. Definitions.
 27-802. Vitamin and mineral content requirements for flour—exceptions.
 27-803. Vitamin and mineral content requirements for bread.
 27-804. Enforcement—modification of requirements.
 27-805. Penalties for violations.

27-801. Definitions. Unless the context requires otherwise, in this act:

(1) "Flour" means the foods commonly known in the milling and baking industries as:

- (a) White flour, also known as wheat flour or plain flour;
- (b) Bromated flour;
- (c) self-rising flour, also known as self-rising white flour or self-rising wheat flour; and
- (d) Phosphated flour, also known as phosphated white flour or phosphated wheat flour; but excluding whole wheat flour and special flours not used for bread, roll, bun, or biscuit baking, such as specialty cake and pancake flours.

(2) "White bread" means any bread made with flour whether baked in a pan or on a hearth or screen, and which is commonly known or usually represented and sold as white bread, including vienna bread, french bread, and italian bread.

(3) "Rolls" includes plain white rolls and buns of the semi-bread dough type, namely: soft rolls, such as hamburger rolls, hot dogs rolls, parker house rolls; and hard rolls, such as vienna rolls, kaiser rolls, yeast-raised sweet rolls, or sweet buns made with fillings or coatings, such as cinnamon rolls or buns and butterfly rolls.

(4) "Department" means the department of health and environmental sciences, provided for in Title 82A, chapter 6.

(5) "Person" means an individual, corporation, partnership, association, joint-stock company, trust, or any group of persons whether incorporated or not, engaged in the commercial manufacture or sale of flour, white bread, or rolls.

History: En. Sec. 1, Ch. 274, L. 1971; amd. Sec. 5, Ch. 349, L. 1974.

in the laws applicable to interstate and to intrastate shipments of such foods."

Compiler's Notes

The preamble to the act states "WHEREAS, there exists in the diets in this country a widespread deficiency of certain food ingredients essential to the health and well-being of the people, it is necessary and advisable to protect so far as may be possible to the health of the people of this state against such deficiency by providing for the enrichment of certain kinds of flour and bread, to increase the content of such essential ingredients, normally present in wheat. In the accomplishment of such purposes, it is necessary and advisable to promote uniformity

Title of Act

An act to require the enrichment of flour and bread to meet certain standards of vitamin and mineral content; and to fix penalties for violation of this act.

Amendments

The 1974 amendment substituted "means" in subdivision (1) for "includes and shall be limited to"; deleted former subdivision (4) reading "'Executive officer' means the executive officer of the health department of the state of Montana"; deleted former subdivision (5) reading "'Board' means the board of health of the state of Mon-

tana"; redesignated former subdivisions (6) and (7) as subdivisions (4) and (5); deleted "of the state of Montana" and added "and environmental services, provided for in Title 82A, chapter 6" at the end of subdivision (4); and made minor changes in style, punctuation and phraseology.

27-802. Vitamin and mineral content requirements for flour—exceptions. It shall be unlawful for any person to manufacture, mix, compound, sell or offer for sale, for human consumption in this state, flour unless the following vitamins and minerals are contained in each pound of such flour: not less than 2.0 milligrams and not more than 2.5 milligrams of thiamine; not less than 1.2 milligrams and not more than 1.5 milligrams of riboflavin; not less than 16.0 milligrams and not more than 20.0 milligrams of niacin or niacin-amide; not less than 13.0 milligrams and not more than 16.5 milligrams of assimilable iron (Fe); except in the case of self-rising flour which in addition to the above ingredients shall contain not less than 500 milligrams and not more than 1500 milligrams of assimilable calcium (Ca); provided, however, that the terms of this section shall not apply to flour sold to distributors, bakers or other processors, if the purchaser furnishes to the seller a certificate in such form as the department shall by regulation prescribe, certifying that such flour will be (1) resold to a distributory, baker or other processor, or

(2) used in the manufacture, mixing or compounding of flour, white bread or rolls enriched to meet the requirements of this act, or

(3) used in the manufacture of products other than flour, white bread or rolls. It shall be unlawful for any purchaser so furnishing a certificate to use or resell the flour so purchased in any manner other than as prescribed in this section.

History: En. Sec. 2, Ch. 274, L. 1971; amd. Sec. 107, Ch. 349, L. 1974.

Amendments

The 1974 amendment substituted "department" in this section for "board."

27-803. Vitamin and mineral content requirements for bread. It shall be unlawful for any person to manufacture, bake, sell, or offer for sale, for human consumption in this state, any white bread or rolls unless the following vitamins and minerals are contained in each pound of such bread or rolls: not less than 1.1 milligrams and not more than 1.8 milligrams of thiamine; not less than 0.7 milligrams and not more than 1.6 milligrams of riboflavin; not less than 10.0 milligrams and not more than 15.0 milligrams of niacin; not less than 8.0 milligrams and not more than 12.5 milligrams of assimilable iron (Fe). The requirements for vitamin and mineral content specified in sections 2 [27-802] and 3 [27-803] are identical with those of the federal standards.

History: En. Sec. 3, Ch. 274, L. 1971.

27-804. Enforcement—modification of requirements. (1) The department shall adopt rules and orders for the efficient enforcement of this act.

(2) When the vitamin and mineral requirements in sections 27-802 and 27-803 are no longer in conformity with the legally established standards governing the interstate shipment of enriched flour and enriched white bread or rolls, the department, in order to maintain uniformity between

intrastate and interstate vitamin and mineral requirements for the foods under this act, shall modify or revise the requirements to conform with amended standards governing interstate shipments. The interstate standards referred to are those standards established under the Federal Food, Drug, and Cosmetic Act of 1938, as amended. (Title 21 U.S.C. 301 et seq.).

(3) In the event of findings by the department that there is an existing or imminent shortage of an ingredient required by sections 27-802 or 27-803, and that because of this shortage the sale and distribution of flour, or white bread, or rolls may be impeded by the enforcement of this act, the department shall issue an order, to be effective immediately upon issuance, permitting the omission of the ingredient from flour, white bread, or rolls; and if it finds it necessary or appropriate, excepting the foods from labeling requirements until the further order of the department. These findings may be made without hearing, on the basis of an order or of factual information supplied by the appropriate federal agency or officer. In the absence of an order of the appropriate federal agency or factual information supplied by it, the department may, on receiving the sworn statements of ten (10) or more persons subject to this act that they believe a shortage exists or is imminent, shall, within twenty (20) days hold a public hearing at which an interested person may present evidence; and shall make findings based on the evidence presented. The department shall publish notice of the hearing at least ten (10) days before it. When the department has reason to believe that the shortage no longer exists, it shall hold a public hearing, after at least ten (10) days' notice has been given, at which an interested person may present evidence, and it shall make findings based on the evidence presented. If it finds that a shortage no longer exists, it shall issue an order effective not less than thirty (30) days after its publication revoking the previous order; however, undisposed flour stocks of flour on hand at the effective date of the revocation order, or flour manufactured before the effective date for sale in this state may thereafter be lawfully sold or disposed of.

(4) Orders and rules adopted by the department under this act shall be published in the manner prescribed in subsection (5) of this section, and, within the limits specified by this act, shall become effective on the date the department fixes.

(5) When under this act publication of any notice, order, or rule is required, the publication shall be made at least once in at least one (1) daily newspaper of general circulation printed and published in this state.

(6) For the purpose of this act, the department may take samples for analysis, conduct examinations and investigations, and enter, at reasonable times, a factory, mill, bakery, warehouse, shop, or establishment where flour, white bread, or rolls are manufactured, processed, packed, sold, or held, or a vehicle being used for the transportation thereof and may inspect the place or vehicle and any flour, white bread, or rolls therein, and all pertinent equipment, materials, containers, and labeling.

History: En. Sec. 4, Ch. 274, L. 1971; amd. Sec. 6, Ch. 349, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "board" in subsections (1) and (4); substituted "department" for "executive officer" throughout subsection (3); and made numerous changes in punctuation and phraseology.

27-805. Penalties for violations. A person who violates the provisions of this act or the orders or rules promulgated by the department under authority of it shall, upon conviction, be fined for each offense no more than \$100 or be imprisoned for any term not to exceed 30 days.

History: En. Sec. 5, Ch. 274, L. 1971; the beginning of this section, and made
amd. Sec. 107, Ch. 349, L. 1974; amd. Sec. minor changes in style, punctuation and
4, Ch. 187, L. 1977. phraseology.

Amendments

The 1974 amendment substituted "department" in this section for "board."

The 1977 amendment deleted "or regulations" after "or the orders or rules" near

Repealing Clause

Section 6 of Ch. 274, Laws 1971 repealed all acts and parts of acts in conflict therewith.

CHAPTER 9—DISPENSING OF DRUGS BY PRACTITIONERS

Section

- 27-901. Definitions.
- 27-902. Practices declared unlawful between drug companies and medical practitioners.
- 27-903. Dispensing of drugs by medical practitioners unlawful—exceptions.
- 27-904. Practices declared unlawful between medical practitioners and pharmacies.
- 27-905. Enforcement proceedings by county attorneys.
- 27-906. Existing ownership of pharmacy.

27-901. Definitions. As used in this act:

(a) The term "medical practitioner" means any person licensed by the state of Montana to engage in the practice of medicine, dentistry, osteopathy, chiropody (podiatry), and in such practice to administer or prescribe drugs.

(b) The term "drug" means any article:

(1) Recognized in the official United States pharmacopeia, the official national formulary, or in any supplement to such pharmacopeia or formulary.

(2) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man.

(3) Intended to affect the structure or any function of the body of man.

(4) Intended for use as a component of any article described in clause (1), (2) or (3) of this paragraph, but such term does not include any device or any components of a device.

(c) The term "device" means any instrument, apparatus, or contrivance intended:

(1) For use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man.

(2) To affect the structure or any function of the body of man.

(d) The term "pharmacy" means an office, pharmacy, drugstore, or other establishment which engages in the sale of drugs at retail.

(e) The term "community pharmacy," when used in relation to a medical practitioner, means a pharmacy situated within ten (10) miles of any place at which such medical practitioner maintains an office for professional practice.

(f) The term "drug company" means any person engaged in the manufacturing, processing, packaging, or distribution of drugs, but such term does not include a pharmacy.

(g) The term "person" means any individual, and any partnership, firm, corporation, association, or other business entity.

(h) The term "state" means the state of Montana or any political subdivision thereof.

History: En. Sec. 1, Ch. 311, L. 1971.

Title of Act

An act to regulate trade in drugs by prohibiting the dispensing of drugs by

medical practitioners and their participation in profits from the dispensing of such products, except under certain circumstances, and for other purposes.

27-902. Practices declared unlawful between drug companies and medical practitioners. It shall be unlawful:

(a) For a drug company to give or sell to a medical practitioner any legal or beneficial interest in the company or in the income thereof with the intent or for the purpose of inducing such medical practitioner to prescribe to his patients the drugs of the company. The giving or selling of such interest by the company to a medical practitioner without such interest first having been publicly offered to the general public shall be prima facie evidence of such intent or purpose.

(b) For a medical practitioner to acquire or own a legal or beneficial interest in any drug company, provided it shall not be unlawful for a medical practitioner to acquire or own such an interest solely for investment, and the acquisition of an interest which is publicly offered to the general public shall be prima facie evidence of its acquisition solely for investment.

(c) For a medical practitioner to solicit or to knowingly receive from a drug company, or for a drug company to pay or to promise to pay to a medical practitioner, any rebate, refund, discount, commission, or other valuable consideration for, on account of, or based upon the volume of wholesale or retail sales at any place of drugs manufactured, processed, packaged, or distributed by the company.

History: En. Sec. 2, Ch. 311, L. 1971.

27-903. Dispensing of drugs by medical practitioners unlawful—exceptions. Except as otherwise provided by this section, it shall be unlawful for a medical practitioner to engage directly or indirectly in the dispensing of drugs. Nothing in this subsection shall prohibit:

(1) A medical practitioner from furnishing a patient any drug in an emergency.

(2) The administration of a unit dose of a drug to a patient by or under the supervision of such medical practitioner.

(3) Dispensing a drug to a patient by a medical practitioner where there is no community pharmacy available to the patient.

(4) The dispensing occasionally, but not as a usual course of doing business by a medical practitioner.

(5) A medical practitioner from dispensing drug samples.

History: En. Sec. 3, Ch. 311, L. 1971.

27-904. Practices declared unlawful between medical practitioners and pharmacies. (a) It shall be unlawful for a medical practitioner to own directly or indirectly a community pharmacy. Nothing in this subsection shall prohibit a medical practitioner from dispensing a drug which he is permitted to dispense under section 3 [27-903].

(b) It shall be unlawful for a medical practitioner directly or indirectly to solicit or to knowingly receive from a community pharmacy, or for a community pharmacy knowingly to pay or to promise to pay to a medical practitioner any rebate, refund, discount, commission, or other valuable consideration for, on account of, or based upon income received or resulting from the sale or furnishing by such community pharmacy of drugs to patients of any medical practitioner.

History: En. Sec. 4, Ch. 311, L. 1971.

27-905. Enforcement proceedings by county attorneys. It shall be the duty of the county attorneys in the counties of the state, under the direction of the attorney general, to institute appropriate proceedings to prevent and restrain such violations. Such proceeding may be by way of complaint setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. Upon the filing of a complaint under this section and the service thereof upon the defendants named therein, the court shall proceed as soon as may be possible to the hearing and determination of the action.

History: En. Sec. 5, Ch. 311, L. 1971.

27-906. Existing ownership of pharmacy. The provisions of subsection (a) of section 4 [27-904 (a)] shall not apply to a medical practitioner as to any interest which he owns as set forth in said subsection on the effective date of this act, provided that transfer of this interest to another person shall result in immediate termination of such exemption.

History: En. Sec. 6, Ch. 311, L. 1971.

REVISED CODES OF MONTANA

VOLUME 3

Part 1

1977 Cumulative Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF
REPLACEMENT VOLUME 3 (PART 1) OF
THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 3
(PART 1) THROUGH VOLUME 557, PACIFIC
REPORTER (2nd SERIES)

Edited by

THE PUBLISHERS' EDITORIAL STAFF

THE ALLEN SMITH COMPANY

Publishers

Indianapolis, Indiana 46202



REVISED CODES OF MONTANA

VOLUME 1

1977

Revised and reprinted from the

Copyright © 1963, 1965, 1967, 1969, 1971, 1973, 1974, 1976 by

THE ALLEN SMITH COMPANY

Indianapolis, Indiana

Copyright © 1977 by

THE ALLEN SMITH COMPANY

Indianapolis, Indiana

NEW LAWS IN VOLUME 3 (Part 1)

For index see supplement to Replacement Volume 9

ENACTED IN 1963

Conciliation of marital disputes, 36-201 to 36-205.
Driver license compact, 31-163 to 31-169.
Highway emergency areas, animals at large in, 32-2816 to 32-2820.
Sovereign immunity defense in damage actions, 40-4402.
State officers and employees, group insurance plans, 40-3905.1.

ENACTED IN 1965

Deeds, validation, 39-135.
Health insurance for persons over 65, 40-5401 to 40-5408.
Highways, 32-2201 to 32-4410.
 Frontage roads for controlled access highways, 32-4308.1.
 Municipalities, state highways through or bypassing, 32-1627, 32-1628.
 Signs, injury to or removal, 32-2134.1 to 32-2134.3.
Insurance securities insider trading regulation, 40-4751 to 40-4758.
Motor vehicle equipment,
 Brakes, 32-21-143.1 to 32-21-143.4.
 Interstate compact, 32-21-166 to 32-21-175.
 Seat belts, 32-21-150.1 to 32-21-150.3.

ENACTED IN 1967

Deeds executed before 1967, validation, 39-136.
Disability insurance, choice of doctors, 40-4108, 40-4109.
Highways,
 Federal beautification grants, expenditure, 32-2422 to 32-2425.
 Herding livestock, 32-21-179, 32-21-180.
 Junkyards along highways, 32-4513 to 32-4523.
 Speed contests, regulation, 32-2143.1, 32-2143.2.
 Traffic safety program, 32-4601, 32-4602, 32-4605 to 32-4607.
Insurance Holding Act, 40-5501 to 40-5508.
Lodging establishments, licensing and regulation, 34-301 to 34-307, 34-309, 34-310.
Uninsured motorist coverage, 40-4403.

ENACTED IN 1969

Deeds executed before 1969, validation, 39-137.
Highways,
 Assistance to persons displaced for highway purposes, 32-2921 to 32-2931.
 Fencing through open range, 32-2426, 32-2427.
 Inspection of school buses, 32-21-155.1.
 Truck, trailer and bus fees, 32-3304.1.
Insurance,
 Casualty insurance, basis for value of total loss of motor vehicle, 40-4404.
 Nonresident agent license, 40-3333 to 40-3338.
 Rates and rating organizations, 40-3634 to 40-3669.
 Workmen's compensation insurance premium rates, 40-5601 to 40-5618.
Motor vehicles requiring rear fenders or flaps, 32-21-149.1.

NEW LAWS IN VOLUME 3 (Part 1) (Continued)

ENACTED IN 1971

Deeds executed before 1971, validation, 39-138.
Excavations in public streets, 32-4801 to 32-4808.
Forest development roads, application of state laws to, 32-2124.3 to 32-2124.5.
Highway department employees acting as peace officers, 32-1631.1, 32-1632 to 32-1637, 32-1639 to 32-1641.
Highway patrol salaries paid from earmarked revenue fund, 31-105.1.
Identification cards issued by highway patrol, 31-170 to 31-174.
Insurance,
 Benevolent associations, annual license for, 40-4918.
 Cancellation of liability or fire insurance, 40-4405 to 40-4416.
 Guaranty association, 40-5701 to 40-5718.
 Holding companies, 40-5509 to 40-5522.
 Mentally retarded or physically handicapped children, continuation of coverage, 40-3738 to 40-3740.
Intoxication tests, 32-2142.1 to 32-2142.3.
Outdoor advertising along highways, 32-4715 to 32-4728.

ENACTED IN 1973

County initiative and referendum, 37-301 to 37-311.
Deeds executed before 1973, validation, 39-139.
Highway construction funds, interim apportionment to match federal-aid funds, 32-2612.
Motorcycles, headgear and noise suppression devices required, 32-21-105.1.
Newborn infant covered by family disability insurance, 40-4002.1.
State institutional services covered by disability insurance, 40-4035 to 40-4038.
Unsound mind, terminology used, 38-121.

ENACTED IN 1974

Fencing along highways, 32-2425.1, 32-2428, 32-2429.
Forest conservation and fire protection, chapter purpose, 28-101.1.
Habitual traffic offenders, 31-175 to 31-190.
Highway construction funds, 32-2613 to 32-2623.
Highway department personnel, hearing of grievances, 32-2504, 32-2505.
Highway patrol retirement system, cost of living increases, 31-231.
Life and Health Insurance Guaranty Association Act, 40-5801 to 40-5819.
Montana state hospital management, definitions, 38-106.1.
Motor vehicle dimension and weight standards, 32-1123.1 to 32-1123.12.
Motor vehicle excess size and weight permits, 32-1127.1 to 32-1127.10.
Personal property insurance, when loss computation based on specific valuation, 40-4303.
Portable sawmills on forest land, definitions, 28-801.
Speed limits as exceptions to basic rule, declaration and enforcement, 32-2144.1 to 32-2144.7.

ENACTED IN 1975

Forest debris and slashings,
 Definitions, 28-403.1.
 Violations, penalty, 28-413.
Habitual driving offender, license revocation and removal of points, 31-184.1.
Highways,
 Encroachments, removal procedure, 32-4411 to 32-4414.
 Grievance procedure for highway employees, 32-2505.1 to 32-2505.3.
 Traffic Safety Act, 32-2624 to 32-2627.
Housing Act of 1975, 35-501 to 35-526.
Husband and wife, individual property of spouse subject to other spouse's debts, determination of necessity, 36-118.1.
Insane and feeble-minded,
 Developmentally disabled, treatment, 38-1201 to 38-1233.
 Seriously mentally ill, treatment, 38-1301 to 38-1331.
Insurance,
 Health service corporations, 40-5901 to 40-5923.
 Montana Insurance Consultant Licensure Act, 40-3339 to 40-3348.

NEW LAWS IN VOLUME 3 (Part 1) (Continued)

ENACTED IN 1977

Forest fire suppression in noncooperating counties, 28-605.
Highway patrol, 31-105.2, 31-112.1, 31-135.1, 31-191, 31-192.
Retirement system, group insurance premium, withholding, 31-201.1, 31-221.1.
Highways,
Construction funds, apportionment, 32-2607.1.
Maintenance of highway system, 32-2407.1 to 32-2407.4.
Housing, weatherization program funds, 35-601 to 35-603.
Initiative and referendum, state, 37-111, 37-115 to 37-138.
Insurance,
Bulk reinsurance, foreign or alien insurers, 40-2911.
Medical liability insurance, 40-6001 to 40-6010.
Professional liability insurance, 40-2827 to 40-2829, 40-4759 to 40-4763.
Rehabilitation and liquidation, proposal for disbursement, 40-5134.
Trade practices and frauds, 40-3502.1 to 40-3502.3, 40-3514.1, 40-3516.1.
Lodging establishment regulation, 34-311, 34-312.
Motor vehicles, careless driving, 32-2143.3.

AMENDMENTS IN VOLUME 3 (Part 1)

Acknowledgment and proof of instruments, 39-107 to 39-109, 39-113.
Advertising along highways, 32-4716 to 32-4724, 32-4728.
Bicycles, traffic regulations, 32-2188, 32-2190.
Developmentally disabled, 38-1202, 38-1205, 38-1206, 38-1208, 38-1209, 38-1215, 38-1216, 38-1222, 38-1229, 38-1232.
Ferries, notice of application, 32-1502.
Forestry,
Conservation and fire protection, 28-103 to 28-106, 28-109 to 28-114, 28-116 to 28-119, 28-121 to 28-123, 28-127, 28-129.
County governing body, regulation of fire hazards, 28-601 to 28-603.
Experiment station, 28-301, 28-303, 28-304.
Fire hazards, management, 28-404 to 28-408, 28-410 to 28-412.
Insect pests and tree diseases, 28-204 to 28-207.
Portable sawmills, 28-802 to 28-806.
Fraudulent conveyances, transfers presumed fraudulent, 29-208.
Guaranty, indemnity and suretyship,
Acceptance of guaranty, exoneration of guarantor, 30-106, 30-208.
Surety, discharge, reimbursement of, subrogation, 30-407, 30-504, 30-505.
Highway patrol, 31-103 to 31-105, 31-110, 31-114, 31-117, 31-123, 31-134, 31-135, 31-145, 31-146, 31-149, 31-177, 31-188.
Retirement system, 31-201, 31-205 to 31-211, 31-213, 31-215, 31-220 to 31-224, 31-228, 31-230, 31-236.
Highways,
Acquisition and disposition of property, 32-3902, 32-3904 to 32-3916, 32-3923 to 32-3931, 32-4016.
Assent to federal aid, 32-2401.
City road fund, 32-2702, 32-2703.
Classification of roads and highways, 32-2301.
Construction funds, 32-2601, 32-2603 to 32-2611, 32-2613, 32-2614, 32-2618, 32-2622, 32-2623.
Construction through or around municipalities, 32-1627, 32-1628.
Contracts, 32-4102, 32-4204.
Controlled access highways, 32-4301 to 32-4303, 32-4305, 32-4308.1.
County commissioners, 32-2801, 32-2803, 32-2805, 32-2901.
County roads and bridges, 32-2814 to 32-2820, 32-2901, 32-3802, 32-3804, 32-3805.
County tax levies, 32-3601, 32-3602.
Definitions, 32-2203.
Department employees as peace officers, 32-1631.1, 32-1632 to 32-1637, 32-1639 to 32-1641.
Legislative intent, 32-2202.
Littering unlawful, 32-4410.
Local improvement districts, 32-3107, 32-3121, 32-3123.

AMENDMENTS IN VOLUME 3 (Part 1) (Continued)

Highways (Continued)

National defense highway program, 32-1702, 32-1703.

State highway commission, 32-2404, 32-2406 to 32-2415, 32-2419 to 32-2425, 32-2426, 32-2427.

Homesteads, 33-102, 33-121, 33-124 to 33-127.

Housing Act of 1975, 35-503 to 35-505, 35-522, 35-526.

Housing authorities, 35-103, 35-109, 35-115, 35-128, 35-129, 35-145.

Housing, emergency war and veterans' facilities, 35-409.

Husband and wife,

Conciliation of marital disputes, 36-203 to 36-205.

Duties, powers and rights, 36-103, 36-111 to 36-118, 36-119, 36-120, 36-127 to 36-129.

Initiative and referendum,

County, 37-301.

Insurance,

Agents, solicitors and adjusters, 40-3308 to 40-3311, 40-3313, 40-3314, 40-3321, 40-3324, 40-3327, 40-3328, 40-3340, 40-3343.

Annual statement, 40-2820.

Assignment of policies, 40-3729.

Benevolent associations, 40-4902, 40-4913, 40-4917.

Cancellation or nonrenewal, notice required, 40-4409, 40-4415, 40-4416.

Casualty insurance contracts, 40-4401, 40-4402, 40-4410.

Commissioner, 40-2709, 40-2726.

Credit life and disability insurance, 40-4203, 40-4206, 40-4211.

Disability insurance, 40-4002, 40-4002.1, 40-4008.

Group and blanket insurance, 40-4101, 40-4102, 40-4108.

Examinations by commissioner, 40-2716, 40-2717.

False financial statements, 40-3506.

Farm mutuals, 40-4804, 40-4807.

Fees and licenses, 40-2726.

Fraternal benefit societies, 40-5305, 40-5321, 40-5324.

Group life insurance, 40-3906, 40-3909.

Incorporation of insurance companies, 40-4705.

Insurers, funds required, serving process, time to plead, 40-2807, 40-2819.

Kinds of insurance, 40-2905, 40-2906.

Life insurance and annuities, 40-3802.

Malpractice insurance, cancellation or increase of premiums, 40-4413, 40-4414.

Mergers and consolidation of insurers, 40-4745.

Nonforfeiture of life insurance, 40-3831.

Rates and rating organizations, 40-3639, 40-3640, 40-3643, 40-3649, 40-3654.

Rehabilitation and liquidation, priority of claims, 40-5127.

Resident agent requirement, 40-2822.

Tax on premiums, 40-2821.

Title insurance reserves, 40-3010.

Trade practices and frauds, 40-3501, 40-3512, 40-3514, 40-3520.

Unauthorized insurers and surplus lines, 40-3427.

Uninsured motorist coverage, 40-4403.

Unlicensed agents, penalty, 40-3332.

Valuation of life insurance policies, 40-3011.

Workers' compensation insurance premium rates, 40-5601, 40-5602, 40-5616, 40-5618.

Junkyards along highways, 32-4515, 32-4516, 32-4518 to 32-4522.

Lodging establishment regulation, 34-101, 34-301 to 34-307.

Motor vehicles,

Accident reports, 32-1208, 32-1213.

Bicycle regulations, 32-2188, 32-2190.

Definitions, 32-2102.

Dimension and weight standards, definitions, 32-1123.2.

Driving under the influence, 32-2142.

Emergency and police vehicles, 32-2128, 32-2175.

Equipment required, 32-2198, 32-21-132, 32-21-149, 32-21-151.

Excess weight, 32-1124 to 32-1126, 32-1128, 32-1130.

Fees, 32-3201, 32-3203 to 32-3205, 32-3205.1.

House trailers, 32-21-112.1.

Juveniles, traffic violations by, 32-21-163, 32-21-164.

AMENDMENTS IN VOLUME 3 (Part 1) (Continued)

Motor vehicles (Continued)

Length restrictions, 32-1123.5.

Motorcycle regulation, 32-21-105.

New vehicle drive-away or tow-away transport fees, 32-3401 to 32-3403, 32-3407, 32-3408.

Operators' and chauffeurs' licenses, 31-119, 31-126 to 31-130, 31-135, 31-138, 31-142, 31-145, 31-147, 31-149.

Railroad grade crossings, 32-2193.

Reckless driving, 32-2143.

School bus inspections, 32-21-155.1.

Tire equipment, restrictions on studs, 32-21-149.

Traffic control devices, 32-2119.

Traffic regulation, 32-2133, 32-2134, 32-2134.3, 32-2137, 32-2144, 32-2145 to 32-2149, 32-2150.3, 32-2157, 32-2158, 32-2163, 32-2170, 32-2173, 32-2174, 32-2177, 32-2192, 32-2195, 32-2197, 32-21-102, 32-21-105, 32-21-105.1, 32-21-113, 32-21-122, 32-21-130, 32-21-149, 32-21-176 to 32-21-180.

Fines and forfeitures, disposition, 31-114, 32-1131.

Truck and trailer fees, 32-3301 to 32-3304.1, 32-3305, 32-3306, 32-3308 to 32-3310, 32-3313 to 32-3315.5, 32-3317 to 32-3320.

Width restrictions, 32-1123.3.

State hospital, 38-110, 38-120, 38-212, 38-506, 38-507.

Traffic safety program, 32-4601, 32-4602, 32-4605 to 32-4607.

Treatment of seriously mentally ill, 38-1301 to 38-1310, 38-1313, 38-1317, 38-1322, 38-1324, 38-1325, 38-1328, 38-1330, 38-1331.

MONTANA REVISED CODES

TITLE 28—FORESTS AND FORESTRY

- Chapter 1. State board of forestry—forest conservation and fire protection, 28-101.1, 28-103 to 28-106, 28-109 to 28-114, 28-116 to 28-119, 28-121 to 28-123, 28-127, 28-129.
2. Forest insect pests and tree diseases, 28-204 to 28-207.
 3. Forest and conservation experiment station, 28-301, 28-303, 28-304.
 4. Disposal of slashings and forest debris, 28-403.1, 28-404 to 28-408, 28-410 to 28-413.
 6. Protection and conservation of forest and farm resources by county commissioners, 28-601 to 28-603, 28-605.
 7. Transportation of coniferous trees, Repealed—Section 1, Chapter 464, Laws of 1977.
 8. Portable sawmills on forest land—license and regulation, 28-801 to 28-806.

CHAPTER 1—STATE BOARD OF FORESTRY—FOREST CONSERVATION AND FIRE PROTECTION

Section 28-101.1. Purpose of chapter.

- 28-103. Definitions.
- 28-104. Responsibility of actual owner of land or timber—scope of act.
- 28-105. Powers of board.
- 28-106. Powers and duties of department.
- 28-109. Duty of owner of classified forest land.
- 28-110. What constitutes compliance.
- 28-111. Determination of costs of fire protection—certification—tax levy.
- 28-112. Payment under protest.
- 28-113. Amount due for protection—lien on land—remedies.
- 28-114. Permit for burning required.
- 28-116. Penalty for failure to comply with permit.
- 28-117. Throwing lighted materials—penalty.
- 28-118. Spark arresters to be provided.
- 28-119. Sawdust piles—restrictions.
- 28-121. Disposition of fines collected.
- 28-122. Department of state lands and the county governing body to co-operate.
- 28-123. Disposition of moneys.
- 28-127. Penalty for violation of chapter.
- 28-129. Owners of forest lands may have hearing before board—conditions.
- 28-130, 28-131. [Transferred.]
- 28-133, 28-134. [Transferred.]

28-101. Repealed.

Repeal

Section 28-101 (Sec. 1, Ch. 128, L. 1939; Sec. 1, Ch. 141, L. 1941; Sec. 1, Ch. 169, L. 1959), relating to creation and

membership of the state board of forestry, was repealed by Sec. 208, Ch. 253, Laws of 1974.

28-101.1. Purpose of chapter. It is the purpose of this chapter to provide for the protection and conservation of forest resources, range, and water, regulation of streamflow, and the prevention of soil erosion.

It is further the purpose of this chapter to more adequately promote and facilitate the co-operation, financial and otherwise, between the state and public and private agencies which are associated in such work.

History: En. 28-101.1 by Sec. 1, Ch. 253, L. 1974: revision of the laws relating to the department of natural resources and conservation.

Title of Act

An act for the codification and general

28-102. Repealed.

Repeal Section 28-102 (Sec. 2, Ch. 128, L. 1939), relating to the functions of the state board of forestry, was repealed by Sec. 208, Ch. 253, Laws of 1974.

28-103. Definitions. Unless the context requires otherwise, in this chapter:

(1) "Forest land" means land which has enough timber, standing or down, slash, or brush, to constitute in the judgment of the department a fire menace to life or property; grassland and agricultural areas are included when those areas are intermingled with or contiguous to and no further than one-half mile from areas of forest land.

(2) "Lands" for conservation purposes means all forest lands within this state which are officially classified by the department as forest lands under 28-106.

(3) "Forest fire" means a fire burning uncontrolled on forest lands.

(4) "Forest fire protection district" means a definite forest land area, the boundaries of which are fixed, and wherein forest fire protection is provided through the medium of an agency recognized by the board.

(5) "Recognized agency" means an agency organized for the purpose of providing forest fire protection and recognized by the board as giving adequate fire protection to forest lands in accordance with rules adopted by the board.

(6) "Forest fire season" means the period of each year beginning on May 1 and ending on September 30, inclusive; however, in the event of excessive or great fire danger, this period may be expanded when in the judgment of the department dangerous fire conditions exist. When expanded, the department shall give public notice.

(7) "Forest fire protection" means the work of prevention, detection, and suppression of forest fires and includes training required to perform those functions.

(8) "Conservation" means the protection and wise use of forest, forest range, forest water, and forest soil resources in keeping with the common welfare of the people of this state.

(9) "Owner" means the person, firm, association, or corporation having the actual, beneficial ownership of forest land or timber other than an easement, right-of-way, or mineral reservation.

(10) "Board" means the board of natural resources and conservation provided for in section 82A-1509.

(11) "Department" means the department of natural resources and conservation, provided for in Title 82A, chapter 15.

History: En. Sec. 3, Ch. 128, L. 1939; amd. Sec. 1, Ch. 216, L. 1955; amd. Sec. 1, Ch. 93, L. 1959; amd. Sec. 1, Ch. 30, L. 1971; amd. Sec. 2, Ch. 253, L. 1974; amd. Sec. 1, Ch. 397, L. 1977.

Amendments

The 1971 amendment inserted subdivisions (2) and (9).

The 1974 amendment inserted the introductory sentence; deleted "for fire protection purposes" after "Forest land" in subdivision (1); substituted "department" for "state forester" in subdivisions (6) and (8); added subdivisions (11) and (12); and made minor changes in phraseology, punctuation and style.

The 1977 amendment substituted "department" in subdivisions (1) and (2) for "board"; inserted "and no further than one-half mile from" near the end of subdivision (1); substituted "under 28-106" at the end of subdivision (2) for "in accordance with section 28-104(b)"; deleted

"Organized" at the beginning of subdivision (4); deleted "representing owners of forest lands in an organized forest fire protection district" after "means an agency" in subdivision (5); deleted "in the district" after "forest fire protection" in subdivision (5); deleted a sentence at the end of subdivision (5) reading "A public agency administering and protecting forest lands may also be recognized by the board as such an agency"; added "and includes training required to perform those functions" at the end of subdivision (7); deleted a former subdivision (8) which read: "'Protection zone' means a broad area within which the forest fire protection costs are approximately the same. Protection zones shall be designated by the department, with the approval of the board"; redesignated subdivisions (9) through (12) as subdivisions (8) through (11); and made minor changes in phraseology, punctuation and style.

28-104. Responsibility of actual owner of land or timber—scope of act. (1) If the owner does not appear upon the public records as the holder of the legal title to the land or timber, he is nevertheless primarily responsible for the performance of the acts and duties imposed upon him by this chapter. Where the owner of the timber is not the owner of the land, the primary responsibility for the performance of the acts and duties imposed by this chapter is upon the owner of the timber.

(2) Sections 28-101.1 through 28-129 apply to all forest lands within this state which are officially classified by the board as forest lands according to the definition of forest land in section 28-103.

History: En. Sec. 4, Ch. 128, L. 1939; amd. Sec. 3, Ch. 141, L. 1941; amd. Sec. 1, Ch. 94, L. 1959; amd. Sec. 3, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "chap-

ter" for "act" in subsection (1); substituted "Sections 28-101.1 through 28-129" in subsection (2) for "Sections 28-101 through 28-129"; and made minor changes in phraseology and style.

28-105. Powers of board. The board may:

(1) Create forest fire protection districts. Before a district is created, the board shall hold a hearing in any county in which the proposed district or a part thereof is included and the department shall give notice of the hearing at least 20 days in advance thereof to all owners to be affected by the proposed district. Service of the notice may be made by registered or certified mail or by publication in a newspaper published in the county in which the hearing is to be held or, if no newspaper is published in the county, then in a newspaper having a general circulation therein. A forest fire protection district may not be created unless approved in writing

by vote of not less than 51% of the owners representing at least 51% of the acreage to be involved in the proposed forest fire protection district.

(2) Adopt and enforce through the department reasonable rules for the purpose of enforcing and accomplishing the provisions and purposes of this chapter; however, these rules may not conflict with the powers of the board of land commissioners.

History: En. Sec. 5, Ch. 128, L. 1939; amd. Sec. 1, Ch. 90, L. 1959; amd. Sec. 1, Ch. 83, L. 1963; amd. Sec. 1, Ch. 149, L. 1967; amd. Sec. 4, Ch. 253, L. 1974; amd. Sec. 2, Ch. 397, L. 1977.

Amendments

The 1963 amendment added the provisions to subdivision (2).

The 1967 amendment in subdivision (2) decreased from 75% to 51% the number of property owners required to approve creation of the proposed district.

The 1974 amendment inserted "department" before "shall give notice" in the second sentence of subdivision (2); deleted a former third subdivision which stated "To provide through the state forester for forest fire protection of any forest lands by the state forester's organization, or by contract or any other feasible means, in co-operation with any federal, state or other recognized agency or agencies"; inserted "through the department" after "enforce" in the first clause of subdivision (3); substituted "chapter" for "act" in the first clause of

subdivision (3); deleted a final subdivision relating to co-operation with the federal government; and made minor changes in phraseology, punctuation and style.

The 1977 amendment deleted former subdivision (1) which read: "Classify the forest land areas of the state for which conservation and fire protection measures are reasonably required, and change or modify the classification from time to time as in its judgment is proper"; redesignated subdivisions (2) and (3) as subdivisions (1) and (2); deleted "organized" after "Create" at the beginning of subdivision (1); and made minor changes in phraseology, punctuation and style.

Effective Dates

Section 2 of Ch. 83, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved February 27, 1963.

Section 2 of Ch. 149, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 24, 1967.

28-106. Powers and duties of department. (1) The department may give technical and practical advice concerning forest, range, water, and soil conservation and the establishment and maintenance of woodlots, windbreaks, shelterbelts, and forest fire protection.

(2) The department may provide for forest fire protection of any forest lands through the department or by contract or any other feasible means, in cooperation with any federal, state, or other recognized agency.

(3) The department may classify the forest land areas of the state for which conservation and fire protection measures are reasonably required and change or modify the classification from time to time as in its judgment is proper.

(4) The department shall cooperate with all public and other agencies in the development, protection, and conservation of the forest, range, and water resources in this state.

(5) Nonforest lands and improvements may be protected by the department when requested by the landowner at rates determined by the department.

(6) The department shall assist the department of state lands in the protection, economic development, and use of the state forests and forest land held by the state for the purposes and benefit of the common schools and state institutions.

History: En. Sec. 6, Ch. 128, L. 1939; amd. Sec. 5, Ch. 253, L. 1974; amd. Sec. 3, Ch. 397, L. 1977.

Amendments

The 1974 amendment substituted "department" for "board" in subsection (1); inserted "range" and "water" after "forest" in subsection (1); added subsections (2) through (4); and made minor changes in phraseology and style.

The 1977 amendment deleted "to the farmers of the state" after "practical advice" in subsection (1); substituted "shelterbelts, and forest fire protection" at the end of subsection (1) for "and shelters"; inserted subsections (3) and (5); and redesignated former subsections (3) and (4) as subsections (4) and (6), respectively.

28-107. Repealed.

Repeal

Section 28-107 (Sec. 7, Ch. 128, L. 1939), directing the state board of for-

estry to assist the state board of land commissioners, was repealed by Sec. 208, Ch. 253, Laws of 1974.

28-109. Duty of owner of classified forest land. An owner of forest land classified as such by the department shall protect against the starting or existence and suppress the spread of fire on that land. This protection and suppression shall be in conformity with reasonable rules and standards for adequate fire protection adopted by the board. If the owner does not provide for the protection and suppression, the department may provide it at a cost to the landowner of not more than 16 cents per acre per year and not less than \$6 per owner per year in each protection district. The owner of the land shall pay to the county treasurer of the county in which the land is situated the charge for the same approved by the department, in accordance with this chapter. No other charges may be assessed those landowners participating, except in cases of proven negligence on the part of the landowner or his agent.

History: En. Sec. 9, Ch. 128, L. 1939; amd. Sec. 2, Ch. 141, L. 1941; amd. Sec. 1, Ch. 188, L. 1955; amd. Sec. 1, Ch. 91, L. 1959; amd. Sec. 1, Ch. 148, L. 1967; amd. Sec. 1, Ch. 252, L. 1974; amd. Sec. 6, Ch. 253, L. 1974; amd. Sec. 4, Ch. 397, L. 1977.

Amendments

The 1967 amendment added subdivision (c) in the second paragraph.

Chapter 252, Laws of 1974, increased the protection cost to owners of Class I land from ten cents to sixteen cents per acre and for owners of Class II land from three cents to five cents per acre.

Chapter 253, Laws of 1974, inserted the numerical subsection designations at the beginning of the paragraphs; substituted "department" for "board" in two places in the third sentence of subsection (1); substituted "this chapter" for "this act" at the end of the third sentence in subsection (1); substituted "department" for "state forester" in the last sentence of subdivision (2) (c); and made minor changes in phraseology and punctuation.

The 1977 amendment deleted the subsection (1) designation at the beginning of the section; substituted "department" in the first sentence for "board"; deleted "during the full period of each forest fire season" at the end of the first sentence; made the maximum cost chargeable to all forest land 16¢ per acre per year instead of 16¢ for Class I land and 5¢ for Class II land; added a minimum cost per owner in the third sentence; deleted former subsection (2) which provided for the classification of forest land; and made minor changes in phraseology, punctuation and style.

Effective Dates

Section 2 of Ch. 148, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 24, 1967.

Section 2 of Ch. 252, Laws 1974, provided the act should be in effect from and after its passage and approval. Approved March 21, 1974.

References

Stocking v. Johnson Flying Service, 143 M 61, 387 P 2d 312.

28-110. What constitutes compliance. (1) An owner of forest lands within an organized forest fire protection district, while a member of or while participating in a recognized agency for forest protection, or within areas protected by a county shall be considered to have fully complied with the requirements of 28-109.

(2) In establishing boundaries of organized forest fire protection districts covering forest lands, the board may for the purpose of administrative convenience designate recognizable landmarks as boundaries.

History: En. Sec. 10, Ch. 128, L. 1939; amd. Sec. 1, Ch. 92, L. 1959; amd. Sec. 7, Ch. 253, L. 1974; amd. Sec. 5, Ch. 397, L. 1977.

The 1977 amendment deleted "Class I or Class II" before "forest lands" in subsections (1) and (2); inserted "fire" before "protection district" in subsection (1); inserted "or within areas protected by a county" in subsection (1); deleted "roads, pipelines, streams, or other" before "recognizable landmarks" in subsection (2); and made minor changes in punctuation and style.

Amendments

The 1974 amendment substituted "covering Class I or Class II forest lands" in subsection (2) for "covering forest lands described in section 28-109 (a) and (b)"; and made minor changes in phraseology and style.

28-111. Determination of costs of fire protection—certification—tax levy. (1) The department shall prepare an annual operation assessment plan in which fire protection costs are determined. The department shall request the legislature to appropriate the state's portion of the cost. After the appropriation is made by the legislature, the department shall cause an assessment to be made on the owners of classified forest land, as specified in 28-109, sufficient to bring the total amount received to the amount specified in the approved plan.

(2) On or before the second Tuesday in August of each year, the department shall certify in writing to the county assessor of each county the names of these owners of forest lands in his county, together with a description of their lands and a statement of the amount found to be due and owing by each of the owners to the department for forest fire protection.

(3) All payments required of owners of forest lands by this chapter are assessments for benefits actually received by those owners in the protection of their lands and are not a tax upon the property of such owners.

(4) Upon receiving the certificate from the department showing the amount due, the county assessor shall extend the amounts upon the county tax rolls covering the lands, and the sums shall become obligations of the owner to be paid and collected in the same manner and at the same time and with like penalties as general state and county taxes upon the same property are collected. All sums collected shall be promptly deposited in the federal and private revenue fund.

History: En. Sec. 11, Ch. 128, L. 1939; amd. Sec. 1, Ch. 95, L. 1959; amd. Sec. 215, Ch. 147, L. 1963; amd. Sec. 8, Ch. 253, L. 1974; amd. Sec. 1, Ch. 110, L. 1977; amd. Sec. 6, Ch. 397, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 110 and once by Ch. 397. Since the amendments do not appear to conflict, the code commissioner has made

a composite section embodying the changes made by both amendments.

Amendments

The 1963 amendment, in the last sentence in the fourth paragraph, substituted "the agency fund to the credit of the state forester" for "a special fund designated the foresters' co-operative work fund, as provided for in section 81-1410."

The 1974 amendment substituted "department" for "state forester" in the first and third sentences of subsection (1); substituted "department" for "board" in the fourth sentence of subsection (1), near the end of subsection (2) and near the end of subsection (3); substituted "department" for "secretary" near the beginnings of subsections (2), (3) and (4); substituted "by this chapter" for "by this act" in subsection (2); substituted "maximum specified in section 28-109" for "maximum hereinbefore specified" at the end of subsection (2); substituted "in the federal and private grant clearance fund for distribution in accordance with section 28-124" in subsection (4) for "in the agency fund to the credit of the state forester"; and made minor changes in phraseology, punctuation and style.

Chapter 110, Laws 1977, substituted "private revenue fund" for "private grant clearance fund for distribution in accordance with section 28-124" at the end of subsection (4); and made minor changes in style.

Chapter 397, Laws of 1977, rewrote the first sentence of subsection (1) which read: "The department shall prepare a fire protection plan for the approval of the board in which fire protection costs for each classification within each protection zone are determined"; deleted a second sentence in subsection (1) which read: "The board shall establish the portion of the planned fire protection costs to be borne by the state, and the portion to be borne by the owners of classified forest land"; substituted "of the cost" at the end of the second sentence of subsection (1) for "as approved by the board"; combined former subsections (2) and (3); deleted "the department shall determine the names of all owners who have failed to provide the forest fire protection for their lands required by this chapter, together with the description of the lands and their acreage, and calculate the total amount due to the department from each owner for forest fire protection, which amount may not exceed the maximum specified in section 28-109" after "each year" near the beginning of subsection (2); inserted subsection (3); substituted "deposited" in the last sentence of subsection (4) for "transmitted to the state treasurer, who shall deposit them"; and made minor changes in style.

Repealing Clause

Section 2 of Ch. 110, Laws 1977 read "Section 28-124, R. C. M. 1947, is repealed."

28-112. Payment under protest. An owner who is required to pay to the county treasurer any sum for forest protection as required by this chapter and who contends that he is not legally obligated to pay the sum or some part thereof, shall pay it to the county treasurer under written protest stating the reasons for the protest. The payment under protest, and all proceedings subsequent thereto, shall be in conformity with the law of this state providing for the payment of taxes under protest and action to recover the same. In the hearing and determination of any action to recover the payment under protest, all questions of the legality and reasonableness of the proceedings of the board and the department may be reviewed and decided.

History: En. Sec. 12, Ch. 128, L. 1939; amd. Sec. 9, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "this

chapter" for "this act" in the first sentence; inserted "and the department" after "board" in the last sentence; and made minor changes in phraseology.

28-113. Amount due for protection—lien on land—remedies. Whenever the department provides forest protection during a forest fire season for any forest land or timber not protected by the owner thereof as required by this chapter, the amount due for the forest protection is a lien upon the land or timber which shall continue until such time as

the amount due is paid. The lien has the same force, effect and priority as general tax liens under the laws of the state, and is subject and inferior only to tax liens on the lands. The county attorney of the county in which the land is situated shall on request of the department foreclose the lien in the name of the state and in the manner provided by law, or the county attorney upon the request of the department, shall institute an action against the forest landowner, in the name of the state, in any district or justice court having jurisdiction, to recover the debt, and the state in the action is not required to pay any fees or costs to the clerk of the court or justice of the peace. The complaint and all subsequent proceedings in the action shall conform as nearly as practicable to that provided by section 84-4302. The remedies provided by this section are cumulative and do not affect the other provisions of this chapter for the payment and collection of amounts due to the department.

History: En. Sec. 13, Ch. 128, L. 1939; amd. Sec. 10, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "board" throughout the section; substituted "this chapter" for "this act" in the first and last sentences; and made minor changes in phraseology.

28-114. Permit for burning required. During the forest fire season or an expansion thereof, a person may not ignite or set a forest fire, slash burning fire, land clearing fire, debris burning fire, or an open fire within forest lands without an official written permit to ignite or set the fire from the recognized protection agency for that protection area. A permit is not required in order to build, set, or ignite a campfire within and upon a designated improved camping ground or upon a plot of land from which all vegetable and inflammable matter and debris have been removed to a point where it may not become ignited by the campfire or by sparks therefrom.

History: En. Sec. 14, Ch. 128, L. 1939; amd. Sec. 11, Ch. 253, L. 1974; amd. Sec. 7, Ch. 397, L. 1977.

Amendments

The 1974 amendment substituted "department" for "board" in the first sentence; and made minor changes in phraseology and punctuation.

The 1977 amendment substituted "the recognized protection agency for that protection area" at the end of the first sentence for "a firewarden or peace officer authorized by the department to issue such permits for forest lands"; and made minor changes in punctuation.

28-116. Penalty for failure to comply with permit. A person to whom a written permit is issued to set or ignite a fire within forest lands during the forest protection season shall comply strictly with the permit. A person who fails to comply with the permit, leaves the fire unattended, leaves the fire before it is totally extinguished, or negligently allows the fire to spread from or beyond the burning area defined by the permit, is guilty of a misdemeanor. The department shall prescribe the form and substance of such permit.

History: En. Sec. 16, Ch. 128, L. 1939; amd. Sec. 12, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "board" in the last sentence; and made minor changes in phraseology and punctuation.

28-117. Throwing lighted materials—penalty. A person who throws or places any lighted cigarette, cigar, ashes, or other flaming or glowing substance that may start a fire in or near any forest material is guilty of a misdemeanor.

History: En. Sec. 17, Ch. 128, L. 1939; amd. Sec. 8, Ch. 397, L. 1977.

Amendments

The 1977 amendment deleted "During the forest fire season, as defined by this act" at the beginning of the section; deleted "or any substance or thing" after "glowing substance"; deleted "cause a fire, in any place where such lighted cig-

arette, cigar, match, ashes, or other flaming or glowing substance, or other substance or things, may directly or indirectly" before "start a fire"; deleted "or throw from a vehicle any lighted cigarette, cigar, ashes or other flaming or glowing substance, or any substance or thing that may cause a fire" before "is guilty"; and made minor changes in phraseology and punctuation.

28-118. Spark arresters to be provided. No person may use, drive, or operate within any forest lands any internal combustion engine that is not equipped with a modern, efficient, and adequate spark arrester and with modern, efficient devices to prevent the escape of sparks, coals, cinders, and other burning material from the exhaust of any such engine.

History: En. Sec. 18, Ch. 128, L. 1939; amd. Sec. 9, Ch. 397, L. 1977.

Amendments

The 1977 amendment deleted "During the forest fire season, as defined by this act" at the beginning of the section; deleted "wood or coal burning locomotive, logging engine, portable engine, traction engine, or stationary engine, or any coal or wood burning jammer or loader, or" before "internal combustion engine"; deleted "smokestack, firebox, ash pan or"

before "exhaust"; deleted "jammer or loader" at the end of the first sentence; deleted a second sentence which read: "And it shall be unlawful for any person to operate any such engine, jammer or loader, within any forest lands during any forest protection season, except when such spark arrester and other devices herein defined are efficient, complete and properly installed for the purpose intended"; and made minor changes in phraseology and punctuation.

28-119. Sawdust piles—restrictions. (1) Before each forest fire season, all persons, firms or corporations, creating or responsible for mill waste within the forest areas, shall treat, dispose of, remove or reduce the hazards created so that the accumulation of sawmilling waste does not constitute a fire hazard.

(2) A sawmill located within or contiguous to forest lands may not accumulate in one pile, sawdust in excess of an amount resulting from the sawing of five hundred thousand (500,000) feet log scale of sawlogs, however, a larger sawdust pile may be accumulated when there is no reasonable danger of fire therefrom and a permit for the additional accumulation is granted by the department. If burning is the disposal method elected, each sawdust pile so accumulated shall be prepared for burning by cribbing the base of each pile with slabs and burned in accordance with rules adopted by the department.

History: En. Sec. 19, Ch. 128, L. 1939; amd. Sec. 1, Ch. 222, L. 1955; amd. Sec. 1, Ch. 195, L. 1969; amd. Sec. 13, Ch. 253, L. 1974.

Amendments

The 1969 amendment inserted the first paragraph and inserted "In the event that burning is the disposal method elected,"

in the last sentence of the second paragraph.

The 1974 amendment substituted "department" for "state forester" in the first sentence of subsection (2); substituted "department" for "board of forestry" in the second sentence of subsection (2); and made minor changes in phraseology, punctuation and style.

28-121. Disposition of fines collected. Fines collected in a court of the state under this act shall be transferred to the state treasurer for deposit in the federal and private grant clearance fund. Whenever a person is convicted in any court of a violation of this act, the court may levy and collect as costs in the case the amount necessary to compensate the county for the expenditures made in and for the prosecution of the offender. These costs when collected shall be deposited by the court, with the proper county treasurer for the benefit of the county.

History: En. Sec. 21, Ch. 128, L. 1939; amd. Sec. 14, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "in the federal and private grant clearance

fund" in the first sentence for "in, and for the credit of, the foresters' co-operative work fund as hereinafter provided"; and made minor changes in phraseology and punctuation.

28-122. Department of state lands and the county governing body to cooperate. The department of state lands and county governing body shall cooperate with the department to the extent legally permissible in providing means and methods of safeguarding the forest land lying within the state and in preventing fire nuisance thereon. The department of state lands and the county governing body shall list forest lands under their jurisdiction with the department for forest protection. The moneys the state and counties become liable for under this section shall be paid from funds provided by law for the protection of the forest lands owned by the state and counties.

History: En. Sec. 22, Ch. 128, L. 1939; amd. Sec. 15, Ch. 253, L. 1974; amd. Sec. 10, Ch. 397, L. 1977.

Amendments

The 1974 amendment substituted "department of state lands" for "state board of land commissioners" and "department" for "board"; and made minor changes in phraseology and punctuation.

The 1977 amendment substituted "county governing body shall" in the first and second sentences for "boards of county commissioners may"; and deleted "a recognized agency or" before "the department for forest protection" at the end of the second sentence.

28-123. Disposition of moneys. The following funds may be expended as directed by the department for fire prevention, detection, suppression and for forest range, water, and soil conservation: All moneys collected by county treasurers as assessments on forest lands for forest protection; moneys collected for the abatement of public nuisances; all fines collected for violations of this chapter; the state's share of the co-operative fire protection funds allocated by the federal government; any other funds provided for the purposes herein indicated. All other co-operative funds collected, appropriated or allocated for the use of the department, including funds for the removal of slash hazards resulting from logging or other wood operations on state and private forest lands, those provided for the purpose of helping to maintain the maximum productivity of the forests of the state, those provided for purposes designed to assist the farmers of the state in the establishment of windbreaks and woodlots in localities where those forest plantings are helpful, and funds for other co-operative work, may not be expended except for

the specific purposes for which they were collected, appropriated or allocated.

History: En. Sec. 23, Ch. 128, L. 1939; amd. Sec. 217, Ch. 147, L. 1963; amd. Sec. 2, Ch. 30, L. 1971; amd. Sec. 16, Ch. 253, L. 1974.

Amendments

The 1963 amendment deleted a sentence at the beginning of the section which read: "In compliance with section 81-1410, all moneys received from all public agencies, private agencies and individuals co-operating with the state forester or the board of forestry, shall be deposited with the state treasurer and placed to the credit of the foresters' co-operative work fund."

The 1971 amendment added "and forest, forest range, forest water, and forest soil conservation" to the introductory sentence; and made a minor change in punctuation.

The 1974 amendment substituted "department" for "board" in the first sentence; substituted "this chapter" for "this act" in the first sentence; substituted "department" for "state forester" in the last sentence; and made minor changes in phraseology and punctuation.

28-124. Repealed.

Repeal

Section 28-124 (Sec. 24, Ch. 128, L. 1939; Sec. 218, Ch. 147, L. 1963; Sec. 17, Ch. 253, L. 1974), relating to disburse-

ment of moneys collected for forest fire protection, was repealed by Sec. 2, Ch. 110, Laws 1977.

28-125. Repealed.

Repeal

Section 28-125 (Sec. 25, Ch. 128, L. 1939; Sec. 1, Ch. 276, L. 1971; Sec. 18,

Ch. 253, L. 1974), relating to powers of ex officio firewardens, was repealed by Sec. 19, Ch. 397, Laws 1977.

28-126. Repealed.

Repeal

Section 28-126 (Sec. 26, Ch. 128, L. 1939), relating to powers and duties of

the state forester, was repealed by Sec. 208, Ch. 253, Laws of 1974.

28-127. Penalty for violation of chapter. A person who violates this chapter, or any rule adopted by the board or department pursuant to this chapter, is guilty of a misdemeanor unless otherwise provided by this chapter, and shall be punished by a fine of not more than five hundred dollars (\$500) or imprisonment in a county jail for not more than six (6) months, or both.

History: En. Sec. 27, Ch. 128, L. 1939; amd. Sec. 19, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "this

chapter" for "this act" throughout the section; inserted "or department" after "adopted by the board"; and made minor changes in phraseology.

28-128. Repealed.

Repeal

Section 28-128 (Sec. 28, Ch. 128, L. 1939), relating to purpose of the act, was

repealed by Sec. 19, Ch. 397, Laws 1977.

28-129. Owners of forest lands may have hearing before board—conditions. An owner of forest land is entitled to a hearing before the board, after a request therefor, on any subject pertaining to the activities of the board, the department or any recognized agency as agent of the department affecting the owner's property. A request for a hearing before the board may not have the effect of suspending the operations of the board, the

department, or any agent of the department undertaken pursuant to this chapter, but upon the hearing, the board may terminate those operations if found unreasonable. A hearing pertaining to costs charged against the forest land of an owner for protection thereof, as provided in 28-109, must be requested on or before August 15 each year.

History: En. Sec. 4, Ch. 141, L. 1941; amd. Sec. 20, Ch. 253, L. 1974; amd. Sec. 11, Ch. 397, L. 1977.

Amendments

The 1974 amendment deleted "or the executive committee thereof" after "hearing before the board" in the first sentence; substituted "or of the department, or any recognized agency as agent of the department" in the first sentence for "or of the state forester as secretary or agent of the board, or any recognized agency

as agent of the board"; substituted "operations of the board or the department, or any agent of the department" in the second sentence for "operations of the board, or any such agent of the board"; and made minor changes in phraseology and punctuation.

The 1977 amendment deleted "within an organized forest fire protection district" after "forest land" near the beginning of the first sentence; and made minor changes in phraseology, punctuation and style.

28-130, 28-131. [Transferred.]

Compiler's Notes

Sections 21 and 22, Ch. 253, Laws of

1974 renumbered these sections as secs. 28-204 and 28-205.

28-132. Repealed.

Repeal

Section 28-132 (Sec. 4, Ch. 25, L. 1953), relating to the definition of forest land-

owner, was repealed by Sec. 208, Ch. 253, Laws of 1974.

28-133, 28-134. [Transferred.]

Compiler's Notes

Sections 23 and 24, Ch. 253, Laws of

1974 renumbered these sections as secs. 28-206 and 28-207.

CHAPTER 2—FOREST INSECT PESTS AND TREE DISEASES

Section 28-204. Policy for control of forest diseases.

28-205. Definitions.

28-206. Forest infestation—zoning—suppression or eradication.

28-207. Abolition of zone of infestation.

28-204. Policy for control of forest diseases. It is the public policy of the state to protect and preserve forest resources from destruction by forest insect pests and tree diseases, to protect the forests and watersheds of Montana, to enhance the production of forests, to promote the stability of forest industry, to protect the recreational values of the forest, and to independently and through co-operation with the federal government and private forest landowners adopt measures to control, suppress and eradicate outbreaks of forest insect pests and tree diseases.

History: En. Sec. 1, Ch. 25, L. 1953; Sec. 28-130, R. C. M. 1947; amd. and redes. 28-204 by Sec. 21, Ch. 253, L. 1974.

Amendments

The 1974 amendment renumbered this section; and made minor changes in phraseology.

28-205. Definitions. In this chapter:

(1) "Forest land" means any land which has enough forest growth, standing or down, to constitute, in the judgment of the department, an

insect or disease infestation breeding ground of a nature to constitute a menace, injurious and dangerous to the forest resources in the district or zone of infestation.

(2) "Forest landowner" means the person, firm, association, or corporation having the actual, beneficial ownership of forest land or timber, other than an easement, right of way, or mineral reservation.

(3) "Department" means the department of natural resources and conservation, provided for in Title 82A, chapter 15.

History: En. Sec. 3, Ch. 25, L. 1953; Sec. 28-131, R. C. M. 1947; amd. and redes. 28-205 by Sec. 22, Ch. 253, L. 1974.

Amendments

The 1974 amendment renumbered this

section; substituted "department" for "state forester and the state board of forestry" in subsection (1); added subsections (2) and (3); and made minor changes in phraseology and style.

28-206. Forest infestation—zoning—suppression or eradication. (1) Whenever the department determines that there exists an infestation of forest insect pests or forest tree diseases injurious to the timber or forest growth on forest lands within the state, and that the infestation is of such a character as to be a menace to the timber or forest growth of this state, the department shall, with the approval of the board of natural resources and conservation, declare the existence of a zone of infestation and fix the boundaries so as to definitely describe and identify the zone.

(2) Thereupon, the department may enter upon the land within the zone of infestation and cause the forest insect pest infestation or forest tree disease to be suppressed, eradicated and destroyed in the manner approved by it. In order to accomplish the suppression, eradication and destruction of the infestation, the department may enter into co-operative agreements with the federal government or other public or private agencies, and with forest landowners, using such funds as are made available for those purposes.

History: En. Sec. 5, Ch. 25, L. 1953; Sec. 28-133, R. C. M. 1947; amd. and redes. 28-206 by Sec. 23, Ch. 253, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "department" for

"state forester" throughout the section; substituted "board of natural resources and conservation" for "state board of forestry" in subsection (1); deleted "written" before "approval" in subsection (1); and made minor changes in phraseology, punctuation and style.

28-207. Abolition of zone of infestation. When the department determines that forest insect or disease control work within the designated zone of infestation is no longer necessary or feasible, it shall abolish the zone of infestation.

History: En. Sec. 6, Ch. 25, L. 1953; Sec. 28-134, R. C. M. 1947; amd. and redes. 28-207 by Sec. 24, Ch. 253, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "department" for "state forester"; and made minor changes in phraseology.

CHAPTER 3—FOREST AND CONSERVATION EXPERIMENT STATION

- Section 28-301. Montana forest and conservation experiment station established.
28-303. Purposes of station.
28-304. Reports—disposition of income.

28-301. Montana forest and conservation experiment station established. There is hereby established in the university of Montana forestry school, a station to be known as the Montana forest and conservation experiment station, which shall be under the direction of the state board of education.

History: En. Sec. 1, Ch. 141, L. 1937; amd. Sec. 25, Ch. 253, L. 1974. versity of Montana forestry school" for "Montana state university, forestry school."

Amendments

The 1974 amendment substituted "uni-

28-303. Purposes of station. It is the purpose of this station:

(1) To study the forest and forest land resources of the state to the end that the state and its citizens may attain the highest economic and social benefits from the forest soils within the state and the influences and products flowing therefrom.

(2) To study the growth and the utilization of timber with special reference to their improvement and the widening of the markets available to the state.

(3) To determine the relationship between the forest and water conservation and waterflow regulation; the forest and pasturage for domestic livestock and wildlife; the forest and recreation and those other direct and indirect benefits that may be secured by the maintenance of or the establishment of forests or woodlands.

(4) To study and develop the establishment of windbreaks, shelter belts and woodlots on the farms of the state that moisture may be conserved thereby for the best production of agricultural crops and forage; for the prevention of soil wastage and erosion; to make the farm home more comfortable and to produce forest material for the use of the farmer and the stockman.

(5) To study the findings of other agencies that the information thus obtained may be used to improve the growth, management and utilization of the timber within the state and to protect it against damage by fire, insects, disease and other harmful agencies.

(6) To collect, to compile and to publish statistics relative to Montana forests and forestry and the influences flowing therefrom; to prepare and publish bulletins and reports, with the necessary illustrations and maps that the information collected by the station in forestry and in conservation may be made available for use and to distribute this information or material in such other ways as the state board of education may direct.

(7) To collect a library and bibliography of literature pertaining to or useful for the purpose of this act.

(8) To study logging, lumbering and milling operations and other operations dealing with the products of forest soils with special reference to their improvement; to investigate, and make tests of forest products produced or that may be produced within the state that markets may be improved thereby.

(9) To consider such other scientific and economic problems as, in the judgment of the state board of education, are of value to the people of the state.

(10) To co-operate with the other departments of the university of Montana, the departments of the state government when mutually beneficial, and with private individuals and agencies; and to co-operate with the United States government and its branches as a land grant institution, or otherwise, in accordance with their regulations.

(11) To establish such field experiment stations as in the judgment of the state board of education may be necessary. The state board of education may accept, for and in behalf of the state of Montana, such gifts of land or other donations as may be made to the state for the purposes of this act.

History: En. Sec. 3, Ch. 141, L. 1937; amd. Sec. 26, Ch. 253, L. 1974.

and the state board of land commissioners, the state fish and game commission, the state livestock commission and with other departments and branches of the state government"; and made minor changes in phraseology and style.

Amendments

The 1974 amendment substituted "the departments of the state government" in subdivision (10) for "the state forester

28-304. Reports—disposition of income. The state board of education may require such regular and special reports to be prepared as it deems necessary. Such regular reports and the special reports and bulletins, with proper illustrations and maps, shall be printed and distributed as the state board of education may direct, and as the interests of the state and of science and industry may demand.

Income received by the station shall be deposited in the state treasury and used for the purposes of administering this act.

History: En. Sec. 4, Ch. 141, L. 1937; amd. Sec. 234, Ch. 147, L. 1963.

Cross-References

Board of regents to exercise powers and duties of state board of education, sec. 75-5617 (2).

Amendment

The 1963 amendment added the second paragraph.

CHAPTER 4—DISPOSAL OF SLASHINGS AND FOREST DEBRIS

Section 28-403.1. Definitions.

- 28-404. Reduction or management of fire hazard created by cutting timber.
- 28-405. Reduction of slash and forest debris along right of way.
- 28-406. Purchaser will ensure compliance, prior to purchase, will transmit withheld money to department.
- 28-407. Disposal of slash—injunction against further cutting—disposal at expense of owner—lien and enforcement—orders.
- 28-408. Supervision by department—rules of board.
- 28-410. Contracts with owners of forest lands.

- 28-411. Methods of reducing hazards—contracts with forest protective agencies.
 28-412. Certification of clearance.
 28-413. Violations.

28-401 to 28-403. (2778.5 to 2778.7) Repealed.

Repeal

Sections 28-401 to 28-403 (Secs. 5 to 7, Ch. 95, L. 1927; Sec. 1, Ch. 81, L. 1931; Secs. 1, 2, Ch. 34, L. 1941; Secs. 1, 2, Ch. 83, L. 1949; Sec. 1, Ch. 18, L. 1953; Sec. 1,

Ch. 230, L. 1955), relating to burning of forest debris and disposal of slashings, were repealed by Sec. 4, Ch. 147, Laws 1971.

28-403.1. Definitions. As used in this chapter: (1) "Department" means the department of natural resources and conservation, provided for in Title 82A, chapter 15.

(2) "Board" means the board of natural resources and conservation, provided for in section 82A-1509.

(3) "Person" means an individual, association, partnership, corporation, estate, or any other entity.

History: En. 28-403.1 by Sec. 1, Ch. 522, L. 1975.

Title of Act

An act amending the fire hazard reduction laws by clarifying those laws; requiring persons clearing right of way to notify the department of natural re-

sources and conservation of the clearing; providing for monthly payments of withheld moneys to reduce the hazards; increasing the permissible maximum of the hazard reduction payments to the department; amending sections 28-404 through 28-408, 28-410, and 28-412, R. C. M. 1947.

28-404. Reduction or management of fire hazard created by cutting timber. Before cutting any forest product or conducting timber stand improvement such as, but not limited to, thinning, weeding, or pruning, upon private lands within the state the person conducting such practice shall provide for the reduction or management of the fire hazard to be created by entering into a fire hazard reduction agreement with the department and by posting a bond to the state in such form and for such amount as may be prescribed by the department, conditioned upon full and faithful compliance with all requirements under this chapter and the faithful reduction or management of the fire hazard in the manner prescribed by law and by rules adopted by the board. The bond shall be released upon completion of the work done in compliance with the terms of the agreement.

History: En. Sec. 1, Ch. 207, L. 1959; amd. Sec. 27, Ch. 253, L. 1974; amd. Sec. 2, Ch. 522, L. 1975.

Amendments

The 1974 amendment substituted "department of natural resources and conservation" in the first sentence for "state forester"; and substituted "The department" for "The state forester" at the beginning of the former last sentence. For prior version, see parent volume.

The 1975 amendment substituted "agreement with the department" for "agreement as provided in sections 28-408 to 28-412"; deleted the proviso which limited the amount of the bond; added "and by rules adopted by the board" after "manner prescribed by law"; substituted "terms of the agreement" for "terms of the bond" in the last sentence; and deleted the former last sentence. For prior version, see parent volume and 1974 amendment note.

28-405. Reduction of slash and forest debris along right of way. (1) A person clearing right of way for any railroad, public highway, public trail, private road, trail, ditch, dyke, pipeline or wire lines, or any other transmission or transportation utility right of way, except temporary roads located within the boundaries of the cutting area and which are used in the actual logging operations, shall reduce the hazard resulting from the clearing or from the cutting of material for the construction of the public or private utility unless exempted by the department. At least ten (10) days before commencement of the clearing, the person conducting the clearing shall notify the department of commencement of the clearing in the form and manner the department provides.

(2) Hazard reduction, including burning where this method of disposal is used, shall be done as rapidly as cutting or clearing progresses; however, upon application to the department it may grant a permit extending the time within which the burning must be done in compliance with this chapter, and chapter 1 of this title relating to burning permits during the closed season.

(3) This section applies to all clearing of rights of way across private land and on behalf of the state, county, highway districts, and road districts, whether the work is done by day labor, or by contract, and unless unavoidable emergency prevents, provision shall be made by the proper officials conducting, directing, or letting the work for withholding until it is complete, a sufficient portion of the payment therefor to assure compliance with this chapter.

(4) In addition to the penalty provided in section 28-413, the offender may be enjoined, at the instance of the department, from proceeding with the work until this section has been complied with; and, upon application of the department to any court of competent jurisdiction, a writ of mandate shall issue compelling the offender to fully comply with this section.

History: En. Sec. 2, Ch. 207, L. 1959; amd. Sec. 28, Ch. 253, L. 1974; amd. Sec. 3, Ch. 522, L. 1975.

Amendments

The 1974 amendment substituted "department" for "state forester" in the first, second and last paragraphs; and made minor changes in style.

The 1975 amendment inserted the subsection designations; deleted a former fourth paragraph relating to penalty provisions; added the second sentence to subsection (1); inserted "and chapter 1 of this title" near the end of subsection (2); substituted "penalty provided in section 28-413" for "penalty herein provided" in subsection (4); and made minor changes in phraseology.

28-406. Purchaser will ensure compliance, prior to purchase, will transmit withheld money to department. The initial purchaser of forest products which have been cut or are about to be cut from any private lands within the state shall, before making the purchase or contract to purchase, determine that the person engaged, or about to engage, in the cutting of these forest products, has provided for the reduction or management of the fire hazard thus created, as provided in this chapter. When the hazard reduction agreement provides that the purchaser of forest products shall withhold moneys to ensure faithful compliance with

this chapter, the purchaser shall transmit all moneys which are withheld to the department on or before the fifteenth (15th) day of each month, clearly identifying by number or other appropriate means the hazard reduction agreement to which the withheld moneys pertain. The purchaser shall keep accurate records of the purchase and the amounts withheld, which may be inspected by the department at any reasonable time. Upon the department making the determination that faithful compliance with this chapter has been achieved, the department shall return to the owner thereof all such withheld moneys with the exception of two per cent (2%) for inspection fees.

History: En. Sec. 3, Ch. 207, L. 1959; amd. Sec. 29, Ch. 253, L. 1974; amd. Sec. 4, Ch. 522, L. 1975.

Amendments

The 1974 amendment substituted "department" for "state forester" in the caption; and made minor changes in style.

The 1975 amendment substituted "this chapter" for "sections 28-404 to 28-412"

in the first and second sentences; inserted "on or before the fifteenth (15th) day of each month" and added the provision for identifying the money withheld at the end of the second sentence; added the third and fourth sentences; deleted a second paragraph relating to penalty provisions; and made minor changes in phraseology, punctuation and style.

28-407. Disposal of slash—injunction against further cutting—disposal at expense of owner—lien and enforcement—orders. (1) If a person fails, refuses, or neglects to properly dispose of slash in accordance with the requirements of sections 28-404 and 28-406, and is engaged or is about to engage, either for himself or for another, in cutting timber or other forest products, and thereby creates a fire hazard, he may be enjoined from cutting the timber until sections 28-404 and 28-406 have been complied with. The department may initiate the proceedings, and the court may in its discretion grant a temporary injunction. The proceedings shall be conducted in the district court of the county where the land is located.

(2) If a person fails to comply with sections 28-404 and 28-406, and has cut any forest products and fails to comply within thirty (30) days after being notified to do so by the department, the department may complete, direct, or authorize the disposal of the slash at the expense of the owner of the timber or other forest products cut or produced from the land upon which the fire hazard remains undisposed of.

(3) The cost and expense of the disposal, plus twenty per cent (20%) of the cost and expense of the disposal as a penalty, constitutes a lien upon the forest products so cut or produced from the land. If payment of the sum demanded is not made to the department within ten (10) days of its written demand, the department shall bring legal action on behalf of the state to recover the debt.

(4) The department shall not file for record any lien against the property of any person who has been issued a certification of compliance with sections 28-404 and 28-406, covering the property.

History: En. Sec. 4, Ch. 207, L. 1959; amd. Sec. 30, Ch. 253, L. 1974; amd. Sec. 5, Ch. 522, L. 1975.

Amendments

The 1974 amendment substituted "de-

partment" for "state forester" throughout the section; and made minor changes in phraseology and style.

The 1975 amendment inserted the subsection designations; deleted "In any such proceedings no bond shall be re-

quired of the plaintiff and" from the beginning of the last sentence of subsection (1); substituted "the department shall bring legal action" for "the department must transfer all papers relative to the unsatisfied demand for payment to the attorney general of the state, who shall bring legal action" near the end of subsection (3); deleted a former last paragraph which read "All orders and di-

rections issued by the department as required by this section and section 28-404 shall be in writing and made in duplicate, the original of which shall be sent or delivered to the person to receive such orders, permits or directions; one copy shall be filed in the office of the department"; and made minor changes in phraseology and punctuation.

28-408. Supervision by department—rules of board. (1) The department, under such rules as the board adopts, may supervise and inspect the reduction or management of any fire hazard created by the cutting of any forest product on private land in the state.

(2) The reduction or management of fire hazards referred to in this chapter shall be in keeping with modern and progressive forest practices and more effective fire control and may include but are not limited to the taking of protective measures to prevent injury or the destruction of forest resources without actual abatement of the hazard.

History: En. Sec. 5, Ch. 207, L. 1959; amd. Sec. 1, Ch. 147, L. 1971; amd. Sec. 31, Ch. 253, L. 1974; amd. Sec. 6, Ch. 522, L. 1975.

Amendments

The 1971 amendment inserted "shall be in keeping with modern and progressive forest practices and more effective fire control and" in the second paragraph.

The 1974 amendment substituted "department" for "state forester" and "board

of natural resources and conservation" for "state board of forestry" in subsection (1); and made minor changes in style.

The 1975 amendment inserted "and inspect" after "supervise" in subsection (1); deleted "to the property of others" after "fire hazard" in subsection (1); substituted "chapter" for "act" in subsection (2); substituted "but are not limited" for "be limited to" in subsection (2); and made minor changes in phraseology.

28-409. Repealed.

Repeal

Section 28-409 (Sec. 6, Ch. 207, L. 1959), relating to delegation of powers by

state forester to state firewardens, was repealed by Sec. 208, Ch. 253, Laws of 1974.

28-410. Contracts with owners of forest lands. The department may, in such form and containing such conditions as it prescribes, enter into agreements with the owners of any forest lands or any operator engaged in operations on lands within the state whereby slash is created. Under the contract the department may assume all responsibility for the reduction or management of any fire hazard. The department may provide in the agreement the amount to be paid by the owner or operator to the department by reason of its agreement to assume the reduction or management of the fire hazard, but the amount may not exceed five dollars (\$5) for each one thousand (1000) feet log scale, or the equivalent thereof if forest products other than logs are cut.

History: En. Sec. 7, Ch. 207, L. 1959; amd. Sec. 2, Ch. 147, L. 1971; amd. Sec. 32, Ch. 253, L. 1974; amd. Sec. 7, Ch. 522, L. 1975.

amount specified in the final sentence from one dollar to two dollars for each one thousand feet.

The 1974 amendment substituted "department" for "state forester" in two places; and made minor changes in phraseology and style.

Amendments

The 1971 amendment increased the

The 1975 amendment substituted "may, in such form and containing such conditions as it prescribes" for "is hereby authorized and empowered" in the first sentence; substituted "department may

provide in the agreement" for "any such contract shall provide" at the beginning of the third sentence; increased the maximum payment from \$2.00 to \$5.00; and made minor changes in phraseology.

28-411. Methods of reducing hazards—contracts with forest protective agencies. The reduction or management of such fire hazards shall be carried on by the department and the state firewardens in keeping with modern and progressive forest practices and more effective fire control and the department is hereby authorized to enter into contracts with forest protective agencies, including agencies of the United States of America, for the reduction or management of such fire hazards when in its opinion the work can best be accomplished in that manner. The department, state firewardens, and recognized forest protective agencies, including any agency of the United States of America, with which the department has entered into an agreement for the reduction or management of any fire hazard as herein provided, and any officer or official of such agency, shall not be liable for any damage to the land, product, improvement, or other things of value of whatsoever nature upon the lands on which the fire hazards are being managed or reduced in accordance with provisions of sections 28-408 to 28-412, when all requisite care and caution has been used and such work is being or has been performed in compliance with the rules provided in section 28-408.

History: En. Sec. 8, Ch. 207, L. 1959; amd. Sec. 33, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "department" for "state forester" throughout the section.

28-412. Certification of clearance. A person who has entered into a contract with the department for the reduction or management of any fire hazard, upon payment of the contract price in accordance with the terms of the contract and the full compliance with the terms of the contract by the person, shall be granted a certification of clearance by the department and be relieved of any and all further liability and responsibility for the removal or reduction of the fire hazard; however, the department may require that a cash bond, equivalent to the contract price, and conditioned upon the faithful performance of the contract, be deposited by the person with the department.

History: En. Sec. 9, Ch. 207, L. 1959; amd. Sec. 3, Ch. 147, L. 1971; amd. Sec. 34, Ch. 253, L. 1974; amd. Sec. 8, Ch. 522, L. 1975.

Amendments

The 1971 amendment made the cash bond discretionary rather than mandatory. For prior version, see parent volume.

The 1974 amendment substituted "department" for "state forester" throughout the section.

The 1975 amendment substituted "person" for "owner or operator" throughout the section; inserted "by the department" after "certification of clearance"; and made minor changes in phraseology and punctuation.

Repealing Clause

Section 4 of Ch. 147, Laws 1971 read "Sections 28-401 through 28-403, R. C. M., 1947, are repealed."

28-413. Violations. A person convicted of violating this chapter is guilty of a misdemeanor and shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1000).

History: En. 28-413 by Sec. 9, Ch. 522, L. 1975.

CHAPTER 5—COUNTY FORESTS—CREATION AND MANAGEMENT BY BOARD OF COUNTY COMMISSIONERS

28-507. Construction of act.

Compiler's Notes

Sections 28-101, 28-102, 28-107, and 28-126, included in the reference in the text to sections 28-101 to 28-128, were repealed by Sec. 208, Ch. 253, Laws 1974.

CHAPTER 6—PROTECTION AND CONSERVATION OF FOREST AND FARM RESOURCES BY COUNTY COMMISSIONERS

- Section 28-601. Authority of county governing body to protect range, farm, and forest resources.
 28-602. Functions of the county governing body.
 28-603. Powers of county governing body.
 28-605. State to be reimbursed for forest fire suppression activities in non-cooperating counties.

28-601. Authority of county governing body to protect range, farm, and forest resources. For the purpose of protection and conservation of range, farm, and forest resources, and of the prevention of soil erosion, the county governing body may perform the functions provided in this chapter.

History: En. Sec. 1, Ch. 173, L. 1945; made minor changes in phraseology and amd. Sec. 12, Ch. 397, L. 1977. punctuation.

Amendments

The 1977 amendment substituted "county governing body" for "respective boards of county commissioners"; and

References

Stocking v. Johnson Flying Service, 143 M 61, 387 P 2d 312.

28-602. Functions of the county governing body. The county governing body, with respect to rural fire control, shall carry out the specific authorities and duties hereinafter imposed:

(1) The governing body shall provide for the organization of volunteer rural fire control crews.

(2) The governing body shall appoint a county rural fire chief and such district rural fire chiefs, subject to the direction and supervision of the county rural fire chief, as they consider necessary. The county rural fire chief may be a regular county officer or other person who in the opinion of the board is the best qualified to perform the duties of this office and who is not entitled to additional compensation for the duties hereby imposed. All district fire chiefs shall serve without compensation.

(3) The county governing body shall within the limitations of 28-603 protect the range, farm, and forest lands within the county from fire in

cooperation with federal, state, and other fire protection agencies, including governing bodies of adjoining counties.

History: En. Sec. 2, Ch. 173, L. 1945; amd. Sec. 1, Ch. 229, L. 1973; amd. Sec. 13, Ch. 397, L. 1977.

Amendments

The 1973 amendment substituted "may" for "shall" following "fire chief" near the beginning of the second sentence in subdivision (2); and inserted "or other person," following "regular county officer" in the second sentence of subdivision (2).

The 1977 amendment substituted "county governing body" near the beginning of the section for "respective boards of county commissioners"; inserted "The governing body shall" at the beginning of subdivisions (1) and (2); substituted subdivision (3) for former subdivision (3) as it appears in the parent volume; and made minor changes in phraseology and punctuation.

28-603. Powers of county governing body. (1) The county governing body may in its discretion establish fire seasons annually during which no person may ignite or set any forest fire, slash-burning fire, land-clearing fire, debris-burning fire, or open fire within the county protection area on any forest, range, or crop lands subject to the provisions of this act without having obtained an official written permit to ignite or set such fire from the recognized protection agency for that protection area.

(2) Any person who ignites or sets any forest fire, slash-burning fire, land-clearing fire, debris-burning fire, or open fire within any forest, range, or crop land subject to the provisions of this act without first having obtained a written permit to ignite or set such fire is guilty of a misdemeanor.

(3) To augment rural crews in case of serious emergency, the governing body may provide for the organization and training of voluntary urban fire crews to be used in rural areas.

(4) Any county rural fire chief or district rural fire chief or his deputy may enter private property or direct the entry of fire control crews for the purpose of suppressing fires. A chief or deputy and the county or rural district are immune from suit for injury to persons or property resulting from actions taken to suppress fires under this subsection.

(5) The county governing body is authorized to appropriate funds for the purchase, care, and maintenance of firefighting equipment or for the payment of wages in prevention, detection, and suppression of fires, or if the general fund is budgeted to the full limit, the county governing body may at any time fixed by law for levy and assessment of taxes levy a tax at such rate as in their judgment will be necessary to raise such needed sum not to exceed \$15,000.

History: En. Sec. 3, Ch. 173, L. 1945; amd. Sec. 1, Ch. 40, L. 1955; amd. Sec. 1, Ch. 337, L. 1971; amd. Sec. 1, Ch. 73, L. 1977; amd. Sec. 14, Ch. 397, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 73 and once by Ch. 397. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

The 1971 amendment increased the maximum appropriation and levy under subsection (5) from \$5,000 to \$15,000.

Chapter 73, Laws of 1977, inserted "or his deputy" near the beginning of subsection (4); substituted the second sentence of subsection (4) for "and are exempt from any damage resulting from such activity"; and made minor changes in phraseology, punctuation and style.

Chapter 397, Laws of 1977, substituted references to the county governing body throughout the section for references to the boards of county commissioners; inserted "the county protection area on" in the middle of subsection (1); substituted "the recognized protection agency for that protection area" at the end of the subsection (1) for "a county rural fire chief or from a district rural fire chief authorized by the board to issue such permits for such lands"; substituted "funds" near the beginning of subsection (5) for "from the general fund of the

county not to exceed fifteen thousand dollars (\$15,000) per year"; substituted "in prevention, detection, and suppression of fires" in the middle of subsection (5) for "to skilled operators of heavy mechanized equipment in the suppression of fires when deemed necessary"; and made minor changes in phraseology, punctuation and style.

References

Stocking v. Johnson Flying Service, 143 M 61, 387 P 2d 312.

28-604. Repealed.

Repeal

Section 28-604 (Sec. 4, Ch. 173, L. 1945; Sec. 2, Ch. 229, L. 1973), relating

to application of the act, was repealed by Sec. 19, Ch. 397, Laws 1977.

28-605. State to be reimbursed for forest fire suppression activities in noncooperating counties. A county that has not entered into a cooperative or other written agreement with the state for forest protection shall reimburse the state for costs incurred by the state in connection with state fire suppression activities resulting from a forest fire emergency in that county.

History: En. 28-605 by Sec. 15, Ch. 397, L. 1977.

Title of Act

An act removing barriers to more efficient delivery of forest fire protection services to Montana's forest and farm resources by simplifying the forest fire assessment system, expanding the responsibility and authority of counties in pro-

viding protection for forest and farm resources, and clarifying statutes relating to firewardens; amending sections 28-103, 28-105, 28-106, 28-109, 28-110, 28-111, 28-114, 28-117, 28-118, 28-122, 28-129, 28-601, 28-602, 28-603, 81-1411, 81-1412, and 81-1415, R. C. M. 1947; and repealing sections 28-125, 28-128, and 28-604, R. C. M. 1947.

CHAPTER 7—TRANSPORTATION OF CONIFEROUS TREES

(Repealed—Section 1, Chapter 464, Laws of 1977)

28-701. Repealed.

Repeal

Section 28-701 (Sec. 1, Ch. 137, L. 1967), relating to transportation of conif-

erous trees on highways was repealed by Sec. 1, Ch. 464, Laws 1977.

CHAPTER 8—PORTABLE SAWMILLS ON FOREST LAND— LICENSE AND REGULATION

Section 28-801. Definitions.

28-802. Portable sawmill license required.

28-803. Application for license—fee.

28-804. Issuance of license—term.

28-805. Revocation of license for violation of law.

28-806. Penalty for violations.

28-801. Definitions. Unless the context requires otherwise, in this chapter:

(1) "Department" means the department of natural resources and conservation provided for in Title 82A, chapter 15.

(2) "Portable sawmill" means a sawmill located upon forest land within the state and having a rated capacity of less than five thousand (5,000) feet per hour of operation.

History: En. 28-801 by Sec. 106, Ch. 253, L. 1974.

28-802. Portable sawmill license required. It is unlawful to operate a portable sawmill located upon forest lands within the state without first obtaining a license therefor from the department.

History: En. Sec. 1, Ch. 124, L. 1931; Sec. 81-1501, R. C. M. 1947; amd. and redes. 28-802 by Sec. 107, Ch. 253, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "department" for "forester of the state of Montana"; and made minor changes in phraseology.

28-803. Application for license—fee. Whenever a person, firm or corporation desires to commence the operation of a portable sawmill located or to be located upon forest lands within the state, that person, firm or corporation shall apply to the department in writing for a license to operate the portable sawmill. The application shall include the name of the person, firm or corporation contemplating the operation of the sawmill, the location thereof by section, township and range numbers, the rated capacity of the sawmill and the approximate amount of stumpage to be cut at the proposed setting and the approximate date desired for the commencement of the operation. The application shall be accompanied by the payment of a fee of two dollars (\$2.00), which is fixed as the license fee for the operation of any portable sawmill, to be credited to the federal and private grant clearance fund.

History: En. Sec. 2, Ch. 12, L. 1931; amd. Sec. 2, Ch. 248, L. 1965; Sec. 81-1502, R. C. M. 1947; amd. and redes. 28-803 by Sec. 108, Ch. 253, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "department" in the first sentence for "state forester of the

state of Montana"; substituted "include" at the beginning of the second sentence for "disclose to the state forester"; substituted "federal and private grant clearance fund" at the end of the section for "earmarked revenue fund, co-operative forest management account"; and made minor changes in phraseology.

28-804. Issuance of license—term. Upon receipt of the application and the payment of the fee the department shall issue a license to the person, firm or corporation applying therefor. The license shall be upon a form provided by the department and shall cover such period as the sawmill remains in continuous operation on a single setting or location, or until revocation by the department.

History: En. Sec. 3, Ch. 124, L. 1931; Sec. 81-1503, R. C. M. 1947; amd. and redes. 28-804 by Sec. 109, Ch. 253, L. 1974.

Amendments

The 1974 amendment renumbered

this section; substituted "department" throughout the section for "state forester"; and made minor changes in punctuation and phraseology.

28-805. Revocation of license for violation of law. Whenever it appears that there is a violation of any law of the state enacted for the protection of forest and forest lands in connection with the operation of a portable sawmill or in the protection of the lands from which the timber sawed or to be sawed at a mill is cut, the department may revoke the license and thereby suspend the operation of a sawmill until the conditions constituting a violation of law are remedied and removed.

History: En. Sec. 4, Ch. 124, L. 1931; Sec. 81-1504, R. C. M. 1947; amd. and redes. 28-805 by Sec. 110, Ch. 253, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "department" for "state forester"; and made minor changes in phraseology.

28-806. Penalty for violations. A person, firm or corporation violating this act is guilty of a misdemeanor and shall be fined not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500), which fines are to be credited to the general school funds of the state; this act shall not be construed to in any manner affect the civil liability of any person in connection with the origin or spread of fire in the forest lands of the state.

History: En. Sec. 6, Ch. 124, L. 1931; Sec. 81-1506, R. C. M. 1947; amd. and redes. 28-806 by Sec. 111, Ch. 253, L. 1974.

Amendments

The 1974 amendment renumbered this section; and made minor changes in punctuation and phraseology.

TITLE 29—FRAUDULENT CONVEYANCES

Chapter 2. Certain instruments and transfers, when void, 29-208.

CHAPTER 1—UNIFORM FRAUDULENT CONVEYANCE ACT

29-101. Definition of terms.

NOTE.—Uniform State Law. In addition to the states listed in the note in the parent volume the following also have

adopted the Uniform Fraudulent Conveyance Act: Idaho, New Mexico, Ohio, Oklahoma, and Virgin Islands.

29-104. Conveyances by insolvent.

Insolvency as Matter of Law

Debtor was insolvent as a matter of law at time he conveyed his ranch property to his children where his total liabilities exceeded his total assets by over \$7,000, including in that computation an

\$11,000 debt to the Federal Land Bank on which debtor remained principal debtor despite a purported assumption of the obligation by his son. *Baker Nat. Bank v. Lestar*, 153 M 45, 453 P 2d 774.

29-105. Conveyances by persons in business.

Joinder of Actions

A creditor may join with his cause of action alleging indebtedness a second cause of action alleging that debtor's giving of mortgages and conveyance of certain property was without fair considera-

tion and made him insolvent, and a third cause of action alleging that after executing the mortgages, he had unreasonably small capital in his business. *Cahill-Mooney Constr. Co. v. Ayres*, 140 M 464, 373 P 2d 703, 709.

29-109. Rights of creditors whose claims have matured.

Money Judgment

The right to seek a money judgment is merely collateral to the primary right to

set aside the conveyance. *Cahill-Mooney Constr. Co. v. Ayres*, 140 M 464, 373 P 2d 703, 705.

CHAPTER 2—CERTAIN INSTRUMENTS AND TRANSFERS, WHEN VOID

Section 29-208. Certain transfers presumed fraudulent.

29-206. (6944) Other provisions.

Compiler's Notes

Sections 18-201 to 18-205, referred to in this section in the parent volume, were

repealed by Sec. 10-102, Ch. 264, Laws 1963.

29-207. (8603) Repealed.

Repeal

Section 29-207 (Sec. 4490, Civ. C. 1895), relating to transfers with intent to

defraud creditors, was repealed by Sec. 17, Ch. 185, Laws 1977.

29-208. (8604) Certain transfers presumed fraudulent. Every transfer of personal property, other than a thing in action, and every lien thereon, other than a mortgage, when allowed by law, made by a person having at the time the possession or control of the property, not accom-

panied by an immediate delivery and followed by an actual and continued change of possession of the things transferred is conclusively presumed to be fraudulent and therefore void against:

- (1) those who are his creditors while he remains in possession;
- (2) the successors in interest of such creditors;
- (3) any persons on whom his estate devolves in trust for the benefit of others than himself; and
- (4) purchasers or encumbrancers in good faith subsequent to the transfer.

History: En. Sec. 4491, Civ. C. 1895; re-en. Sec. 6128, Rev. C. 1907; re-en. Sec. 8604, R. C. M. 1921; amd. Sec. 5, Ch. 185, L. 1977. Cal. Civ. C. Sec. 3440. Field Civ. C. Sec. 1919.

Amendments

The 1977 amendment deleted "or a ship

or cargo at sea, or in a foreign port" after "other than a thing in action"; deleted "and a contract of bottomry or respondentia" before "made by a person having at the time the possession"; inserted the subdivision designations; and made minor changes in punctuation and phraseology.

29-210. (8606) Question of fraud—how determined.

Sufficiency of Evidence

Finding of district court that transferor of property had no intent to defraud creditors was supported by substantial evidence of: a substantial cash payment to transferor; application of entire proceeds to transferor's debts; lack of secrecy in transaction; application of wife's interest in part of property transferred to hus-

band's debts; sale of fractional interest in mother's estate to brother also holding fractional interest therein, who presumably would be willing to pay more than stranger; and apparent existence of sufficient remaining assets with which to discharge transferor's remaining indebtedness. *White v. Nollmeyer*, 151 M 387, 443 P 2d 873.

TITLE 30—GUARANTY, INDEMNITY AND SURETYSHIP

- Chapter 1. Guaranty—definition, creation and interpretation, 30-106.
2. Guarantors—liability and exoneration, 30-208.
4. Suretyship—sureties and their liability, 30-407.
5. Rights of sureties and creditors, 30-504, 30-505.
6. Letters of credit, Repealed—Section 10-102, Chapter 264, Laws of 1963.

CHAPTER 1—GUARANTY—DEFINITION, CREATION AND INTERPRETATION

Section 30-106. Acceptance of guaranty.

30-101. (8171) Guaranty defined.

Letter of Credit

Letter of credit from bank to debtor stating "We are willing to guarantee these funds to whomever you purchase

this engine from . . ." constituted a guaranty of the purchase price of the engine. *Miller v. Walter*, — M —, 527 P 2d 240.

30-106. (8176) Acceptance of guaranty. A mere offer of guaranty is not binding until notice of its acceptance is communicated by the guarantee to the guarantor; but an absolute guaranty is binding upon the guarantor without notice of acceptance.

History: En. Sec. 3613, Civ. C. 1895; re-en. Sec. 5661, Rev. C. 1907; re-en. Sec. 8176; R. C. M. 1921; amd. Sec. 6, Ch. 185, L. 1977. Cal. Civ. C. Sec. 2795. Field Civ. C. Sec. 1539.

Amendments

The 1977 amendment substituted "A mere offer of" for "A mere offer to."

Reasonable Notice of Acceptance

Notice of acceptance of bank's offer of guaranty on price of an engine was reasonable and timely when made at time of bank's repossession of truck (three months after actual acceptance) and nearly three months before truck was resold. *Miller v. Walter*, — M —, 527 P 2d 240.

CHAPTER 2—GUARANTORS—LIABILITY AND EXONERATION

Section 30-208. What dealings with debtor exonerate guarantor.

30-208. (8188) What dealings with debtor exonerate guarantor. A guarantor is exonerated, except so far as he may be indemnified by the principal, if by any act of the creditor without the consent of the guarantor the original obligation of the principal is altered in any respect or the remedies or rights of the creditor against the principal in respect thereto are in any way impaired or suspended.

History: En. Sec. 3650, Civ. C. 1895; re-en. Sec. 5673, Rev. C. 1907; re-en. Sec. 8188, R. C. M. 1921; amd. Sec. 7, Ch. 185, L. 1977. Cal. Civ. C. Sec. 2819. Field Civ. C. Sec. 1551.

Amendments

The 1977 amendment made minor changes in punctuation and phraseology.

Alteration of Remedies or Rights of Creditor

An alteration or elimination of debtor's remedy did not result in exoneration of the guarantor; elimination of right of redemption of debtor corporations which owned real property subject to security interest by secured party's action in forcing transfer of pledged stock certificates

did not exonerate guarantor. *Stensvad v. Miners and Merchants Bank of Roundup*, — M —, 517 P 2d 715.

Execution and Delivery of Note as Evidence

Debtor's execution and delivery to creditor of note as evidence of debt rather than as payment thereof did not exonerate debtor's surety in the absence of prejudice to the surety. *Falls Implement Co. v. General Ins. Co. of America*, 152 M 250, 448 P 2d 675.

Rescission of Contract by Creditor

Where vendees of real estate abandoned premises with the knowledge of vendors, who repossessed by permitting another party to occupy and served a notice of cancellation of the contract for sale upon vendees, vendors, by such rescission of contract, lost their right to bring action against vendees' guarantor for unpaid purchase price. *Scott v. Kyhl*, 141 M 523, 379 P 2d 803.

References

United States v. Helena Office Supply Co., 256 F Supp 53, 54.

CHAPTER 3—INDEMNITY

30-301. (8163) Indemnity defined.

References

Western Constr. Equipment Co. v. Mosby's, Inc., 146 M 313, 406 P 2d 165.

30-307. (8169) Rules for interpreting agreement of indemnity.

References

Western Constr. Equipment Co. v. Mosby's, Inc., 146 M 313, 406 P 2d 165.

30-308. (8170) When person indemnifying is a surety.

References

Western Constr. Equipment Co. v. Mosby's, Inc., 146 M 313, 406 P 2d 165.

CHAPTER 4—SURETYSHIP—SURETIES AND THEIR LIABILITY

Section 30-407. Surety discharged by certain acts of the creditor.

30-407. (8201) Surety discharged by certain acts of the creditor. A surety is exonerated:

- (1) in like manner with a guarantor;
- (2) to the extent to which he is prejudiced by any act of the creditor which would naturally prove injurious to the remedies of the surety or inconsistent with his rights or which lessens his security; or
- (3) to the extent to which he is prejudiced by an omission of the creditor, when required by the surety, to do anything which it is the creditor's duty to do.

History: En. Sec. 3684, Civ. C. 1895; re-en. Sec. 5686, Rev. C. 1907; re-en. Sec. 8201, R. C. M. 1921; amd. Sec. 8, Ch. 185, L. 1977. Cal. Civ. C. Sec. 2840. Field Civ. C. Sec. 1584.

Amendments

The 1977 amendment made minor

changes in style, punctuation and phraseology.

Impairment of Remedies or Rights

Under subdivisions 1 and 2 of this section a surety is discharged when his remedies or rights are impaired by an act of the creditor. *United States v.*

Helena Office Supply Co., 256 F Supp 53, 54.

Prejudice of Surety Required for Release

Subdivision 3 of this section and section 30-502 relieve a surety in cases of omission or neglect, but only after a request by the surety that the creditor proceed. *United States v. Helena Office Supply Co.*, 256 F Supp 53, 54.

Rescission of Contract by Creditor

Where vendees of real estate abandoned premises with the knowledge of vendors, who repossessed by permitting another party to occupy and served a notice of cancellation of the contract for sale upon vendees, vendor, by such rescission of contract, lost their right to bring action against vendees' guarantor for unpaid purchase price. *Scott v. Kyhl*, 141 M 523, 379 P 2d 803.

CHAPTER 5—RIGHTS OF SURETIES AND CREDITORS

Section 30-504. Principal bound to reimburse surety.

30-505. Surety's right of subrogation—contribution from cosureties.

30-502. (8203) Surety may require the creditor to proceed, etc.

Prejudice of Surety Required for Release

Subdivision 3 of section 30-407 and this section relieve a surety in cases of omission or neglect, but only after a request by the surety that the creditor proceed. *United States v. Helena Office Supply Co.*, 256 F Supp 53, 54.

sion or neglect, but only after a request by the surety that the creditor proceed. *United States v. Helena Office Supply Co.*, 256 F Supp 53, 54.

30-504. (8205) Principal bound to reimburse surety. If a surety satisfies the principal obligation or any part thereof, whether with or without legal proceedings, the principal is bound to reimburse what the surety has disbursed, including necessary costs and expenses; but the surety has no claim for reimbursement against other persons, though they may have been benefited by his act, except as prescribed by the next section.

History: En. Sec. 3693, Civ. C. 1895; re-en. Sec. 5690, Rev. C. 1907; re-en. Sec. 8205, R. C. M. 1921; amd. Sec. 9, Ch. 185, L. 1977. Cal. Civ. C. Sec. 2847. Field Civ. C. Sec. 1568.

Amendments

The 1977 amendment made minor changes in punctuation and phraseology.

30-505. (8206) Surety's right of subrogation—contribution from cosureties. A surety, upon satisfying the obligation of the principal, is entitled to enforce every remedy which the creditor then has against the principal to the extent of reimbursing what the surety has expended and also to require all his cosureties to contribute thereto, without regard to the order of time in which they became such.

History: En. Sec. 3694, Civ. C. 1895; re-en. Sec. 5691, Rev. C. 1907; re-en. Sec. 8206, R. C. M. 1921; amd. Sec. 10, Ch. 185, L. 1977. Cal. Civ. C. Sec. 2848. Field Civ. C. Sec. 1569.

Amendments

The 1977 amendment made minor changes in punctuation and phraseology.

CHAPTER 6—LETTERS OF CREDIT

(Repealed—Section 10-102, Chapter 264, Laws of 1963)

30-601 to 30-609. (8210 to 8218) Repealed.

Repeal

These sections (Secs. 3710 to 3718, Civ. C. 1895; Secs. 5695 to 5703, Rev. C. 1907; Secs. 8210 to 8218, R. C. M. 1921), relat-

ing to letters of credit, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

TITLE 31—HIGHWAY PATROL

- Chapter 1. Montana highway patrol—creation—powers and duties, 31-103 to 31-105.2, 31-110, 31-112.1, 31-114, 31-117, 31-119, 31-123, 31-126 to 31-130, 31-134 to 31-135.1, 31-138, 31-142, 31-145 to 31-147, 31-149, 31-163 to 31-192.
2. Highway patrolmen's retirement system, 31-201, 31-201.1, 31-205 to 31-211, 31-213, 31-215, 31-220 to 31-224, 31-228, 31-230, 31-231.

CHAPTER 1—MONTANA HIGHWAY PATROL—CREATION— POWERS AND DUTIES

- Section 31-103. Organization—rules and regulations.
- 31-104. Chief—appointment—tenure of office—salary—supervisory power—resident requirement.
- 31-105. Appointment and promotion of officers—replacements and additions—reserve patrolmen—salaries—qualifications—probationary training—tenure—disciplinary action—hearing—appeal.
- 31-105.1. Salaries paid out of earmarked revenue fund.
- 31-105.2. Reimbursement for time spent answering subpoena.
- 31-110. Offenses for which arrest may be made by patrolmen—when patrolmen police officers—forbidden to act in labor disputes—temporary control of traffic in cities and towns—investigations of accidents—inspection of livestock.
- 31-112.1. Check in lieu of cash.
- 31-114. Highway patrol—fees—fines and forfeitures.
- 31-117. Drivers' examination section of highway patrol.
- 31-119. Vehicle—motor vehicle—farm tractor—school bus—bus—motorcycle.
- 31-123. Chief—board.
- 31-126. What persons are exempt from license.
- 31-127. What persons shall not be licensed.
- 31-128. Classification of chauffeurs—special restrictions.
- 31-129. Instruction and traffic education permits and temporary licenses.
- 31-130. Application for license, instruction permit or motorcycle endorsement.
- 31-134. Examination of applicants.
- 31-135. Licenses issued to operators and chauffeurs—renewals and expiration thereof.
- 31-135.1. Indication on driver's license of intent to make anatomical gift.
- 31-138. Duplicate certificates.
- 31-142. Authority of board to cancel licenses.
- 31-145. When court to forward license to division and report convictions.
- 31-146. Mandatory revocation of license by board or chief upon proper authority.
- 31-147. Authority of board to suspend license or driving privilege or issue probationary license.
- 31-149. Period of suspension or revocation.
- 31-163. Driver license compact enacted—text.
- 31-164. Highway patrol board as licensing authority—information and documents furnished.
- 31-165. Reimbursement of compact administrator.
- 31-166. Governor as executive head.
- 31-167. Report to highway patrol board of suspension or revocation of licenses.
- 31-168. Offenses furnishing ground for suspension or revocation of license.
- 31-169. Review of administrative actions.
- 31-170. Authority of board to issue identification cards.
- 31-171. Rules and regulations for identification cards.
- 31-173. Agents for issuance of identification cards.
- 31-174. Fees for identification cards.
- 31-175. Purpose.
- 31-176. Legislative intent.

- 31-177. Definitions.
- 31-178. Administrator's duties.
- 31-179. County attorney to file verified complaint.
- 31-180. Notification of attorney general—his duties.
- 31-181. Abstracts admissible as evidence.
- 31-182. Court to issue show cause order.
- 31-183. Service of process.
- 31-184. Court hearing.
- 31-184.1. Department to revoke license of habitual offender—method of removal of points upon revocation.
- 31-185. Penalties.
- 31-186. Unlawful for habitual traffic offender to operate motor vehicle.
- 31-187. Habitual traffic offender operating motor vehicle guilty of misdemeanor.
- 31-188. When defendant certified for trial.
- 31-189. Construction.
- 31-190. Severability.
- 31-191. Purpose.
- 31-192. Establishment of driver improvement program—participation by offending drivers.

31-102. Board defined—chairman.

Cross-References

Board abolished and functions transferred, sec. 82A-1205(2).

31-103. Organization—rules and regulations. The Montana highway patrol board shall maintain a permanent place of business at the state capital and shall meet at least once each month for the purpose of transacting its business and it may make, promulgate and amend rules and regulations which prescribe procedures and practice requirements of the Montana highway patrol. The Montana highway patrol shall provide for clerical help, provide for the maintenance of the patrol and for the employment and supervision of the patrol in conformity with the provisions of this act. The Montana highway patrol shall furnish the governor of the state of Montana with automobile transportation upon his request, provided that such transportation shall be limited to travel and transportation of the governor while on official business of the state of Montana.

History: En. Sec. 3, Ch. 199, L. 1943; amd. Sec. 1, Ch. 55, L. 1945; amd. Sec. 1, Ch. 245, L. 1971.

Effective Date

Section 2 of Ch. 245, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 9, 1971.

Amendments

The 1971 amendment added to the end of the first sentence the clause authorizing rules and regulations.

31-104. Chief—appointment—tenure of office—salary—supervisory power—resident requirement. The attorney general shall select a highway patrol chief who shall have the rank of colonel and shall hold his office until his appointment has terminated for cause, as hereinafter set forth and shall receive a salary fixed by the attorney general within the limits of the legislative appropriation for such purpose, and travel expenses, as provided for in sections 59-538, 59-539, and 59-801. The chief shall have direct control and supervision of all patrolmen, subject to the approval of the attorney general. The person named as chief shall have been a continuous resident of Montana for at least five (5) years. The chief, with

the approval of the attorney general and within the limits of any appropriation made available for such purposes, shall:

1. Designate the authority and responsibility in each such rank, grade and position;
2. Formulate standards, policies and qualifications in the selection of recruit patrolmen;
3. Prescribe the official uniform of the Montana highway patrol;
4. Station employees in such localities as he shall deem advisable for the enforcement of the traffic laws of this state;
5. Charge against each employee the value of property of the state, lost or destroyed through the carelessness or neglect of such employee;
6. Discharge, demote, or temporarily suspend after hearing as provided in section 31-105, any patrolman of the department;
7. Have purchased, or otherwise acquired, by the purchasing department of the state, motor equipment and all other equipment and commodities deemed by him essential to the efficient operation of the Montana highway patrol.

History: En. Sec. 4, Ch. 199, L. 1943; amd. Sec. 1, Ch. 102, L. 1957; amd. Sec. 1, Ch. 173, L. 1967; amd. Sec. 15, Ch. 439, L. 1975; amd. Sec. 3, Ch. 343, L. 1977.

Amendments

The 1967 amendment substituted "chief" for "supervisor" wherever it appears in the first paragraph; inserted "have the rank of colonel and shall" after "who shall"; substituted "fixed by the board with approval of the board of examiners within the limits of the legislative appropriation for such purpose" for "of seven thousand dollars (\$7,000.00) per annum" after "shall receive a salary"; deleted "for such Montana highway patrol" at the end of the first paragraph;

and substituted "patrolman" for "employee" in subparagraph 6.

The 1975 amendment substituted "travel expenses, as provided for in sections 59-538, 59-539, and 59-801" for "necessary traveling expenses" at the end of the first sentence in the introductory paragraph.

The 1977 amendment substituted "attorney general" for references to "board," "board with approval of the board of examiners," and "Montana highway patrol board."

Cross-References

Attorney general to select patrol chief, sec. 82A-1205(2).

Functions of patrol and chief transferred, sec. 82A-1206.

31-105. Appointment and promotion of officers—replacements and additions—reserve patrolmen—salaries—qualifications—probationary training—tenure—disciplinary action—hearing—appeal. (1) Appointments and promotions. (a) The division of motor vehicles, department of justice shall designate supervisory personnel including, but not limited to, captains, lieutenants, sergeants, and patrolmen in such numbers as necessary, but within the limits of the legislative appropriation made available for such purposes.

(b) Replacements and additions to the highway patrol force shall be chosen in equal numbers from the twelve (12) highway districts, provided however, that if sufficient qualified applications are not received from any one district that the division may in its discretion substitute other qualified applicants from any other districts.

(c) Patrolmen filling vacancies caused by the incumbents' entrance into the armed forces of the United States, shall on the return of the incumbents be placed in the patrol reserve, without pay; otherwise they shall

hold their probationary or permanent appointments while there are sufficient operating funds. Reserve patrolmen shall then be used for future replacements in the permanent patrol.

(d) Supervisory personnel shall be selected from the patrolmen by the chief, subject to the approval of the division. The duties and jurisdiction of the supervisory personnel shall be outlined, defined and under the control of the chief subject to the approval of the division.

(2) In the event that a probationary patrolman is appointed permanently, he shall, at the time of such appointment, receive the base salary of patrolmen.

(3) Qualifications. (a) Patrolmen shall possess the following qualifications:

- (i) Sound and active physical and mental condition.
- (ii) Good moral character.
- (iii) Resident of Montana for at least one (1) year immediately prior to appointment.
- (iv) Pass a satisfactory test in the operation of automobiles.
- (v) Citizens of the United States and state of Montana.

(4) Probationary training. (a) All new patrolmen shall be placed under probationary training and service for a period of six (6) months to one (1) year, during which time the highway patrol chief must recommend to the division for permanent appointments; otherwise the probationary patrolmen will automatically be discharged.

(b) All newly appointed supervisory personnel shall be placed under probationary training and service for a period of six (6) months to one (1) year, during which time the highway patrol chief must recommend to the division for permanent appointments; otherwise the supervisory personnel will automatically revert to their previous ranks without prejudice.

(5) Tenure of office. Every person employed or appointed and designated as a chief, captain, lieutenant, sergeant, patrolman, or any other rank under and pursuant to the provisions of this act, except as provided in subsection (4) above, shall continue in service and hold his position without demotion until suspended, demoted, or discharged in the manner hereinafter provided, for one (1) or more of the causes specified in the following subsection.

(6) Suspension, demotion or discharge. Cause for suspension, demotion or discharge will be:

(a) Conviction of any crime involving moral turpitude in any court of competent jurisdiction subsequent to the commencement of such employment.

(b) Gross neglect of duty or willful violation or disobedience of orders or regulations.

(c) Loitering about or entering places of ill fame, ill repute, or where gambling is known to be conducted or to be in progress, except in the immediate discharge of duty.

- (d) Conduct unbecoming an officer.
 - (e) Drinking intoxicating liquor while using state-owned cars or in uniform, or being intoxicated in a public place.
 - (f) Sleeping while on duty.
 - (g) Incapacity, or partial incapacity, materially affecting his ability to perform his official duties.
 - (h) Gross inefficiency in performing duties.
 - (i) Willful disobedience of rules and regulations adopted by the division, governing the conduct and discipline of members of the patrol.
- (7) Method of preferring charges. (a) The charge or charges against any patrolman shall be made in writing and shall be signed and sworn to by the person making the charge or charges.
- (b) The written charge or charges shall be filed with the chief of the Montana highway patrol.
- (c) Any charge or charges which could result in the suspension or discharge of the chief or supervisory personnel with the rank of captain or above shall be filed directly with the division.
- (d) When charges are filed and the chief believes that such charge or charges constitute grounds for suspension, demotion or discharge, he shall order a hearing to be had thereon before the division and fix a time for such hearing.
- (e) When charges are filed and the chief believes such charge or charges do not constitute grounds for suspension, demotion or discharge he shall dismiss such charges.
- (f) The division shall have the authority to order the chief to file charges with the division when the chief in his judgment does not believe the charge or charges warrant a hearing.
- (8) Authority to suspend, demote or discharge. (a) When the highway patrol chief has cause to believe that any member of the highway patrol has violated any of the hereinabove grounds for suspension, demotion or discharge, or his conduct has warranted reprimanding, he may, with the approval of the division, suspend, demote or reprimand the member.
- (b) If the chief orders a hearing he may suspend such patrolman pending the rendition of the decision made in such case.
- (9) Length of suspension—demotion pay status. (a) Any member under suspension shall be on leave without pay and for a period not to exceed thirty (30) days in time.
- (b) In cases of disciplinary action resulting in demotion, the member shall receive the pay of the rank to which he is demoted.
- (10) Notification of hearing. (a) The chief shall, at least ten (10) days before the time appointed for a hearing, serve written notice specifying the charge or charges filed and stating the name of the person or persons making the charge or charges, on the accused patrolman personally, if his whereabouts is known, in the state of Montana.

(b) If at the time, the whereabouts of the accused patrolman is unknown, or if he be outside of the state of Montana, service may be made upon him by mailing the written notice to him at his last known place of residence in Montana.

(11) Hearing. (a) The division shall be the authority to hear such charge or charges and render a decision and appropriate order.

(b) The division shall have the power to compel the attendance of witnesses at any such hearing and to examine them under oath and to require the production of books, papers, and other evidence at such hearing and for that purpose issue subpoenas and cause the same to be served and executed in any part of the state.

(c) The accused patrolman shall be entitled to be confronted with the witnesses against him and have an opportunity to cross-examine the same and to introduce at such hearing testimony in his own behalf and shall be entitled to be represented by counsel at such hearing.

(d) The division shall within fifteen (15) days after such hearing render its decision in writing and file same in its office with the chief and with the patrolman accused also.

(12) Disciplinary action. (a) If, after a hearing, the division finds that any such charge or charges, made against the patrolman be true, it may punish the offending party by reprimand, suspension without pay, demotion, or discharge.

(b) If after the hearing, the division finds that the charge or charges made against the patrolman not be true, the division shall reinstate the accused patrolman to his position and rank and shall order the payment of any salary withheld pending the determination of the charge or charges.

(13) Right to appeal. (a) Any patrolman who is suspended, demoted, or discharged may have a right of appeal to the district court of Lewis and Clark county.

(b) Such appeal must be made within ten (10) days after such decision or determination of the division.

(c) The district court shall review such decision or determination in a summary manner and shall render its decision upon such appeal within ninety (90) days from the filing of such appeal in said court.

(d) If the decision or determination of the division shall be finally reversed or modified by the district court, the accused patrolman shall be reinstated in his position and the division shall pay to the said patrolman any salary or wages withheld from him pending the determination of the charge or charges, or as may be directed by the court.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977.

Amendments

The 1967 amendment substantially re-

wrote this section. For previous text, see parent volume.

Chapter 188, Laws of 1975, deleted former subdivision (6)(i) relating to participation in political campaigns and contributions to parties or candidates; and redesignated subdivision (6)(j) as (6)(i).

Chapter 483, Laws of 1975, substituted references to the division of motor vehicles, department of justice for references to the Montana highway patrol

board throughout the section; inserted "supervisory personnel including, but not limited to" in subdivision (1)(a); substituted "supervisory personnel" for "captains, lieutenants and sergeants" throughout the section; deleted a sentence reading "These salaries shall be increased one per cent (1%) per year for each additional year of service" at the end of subdivision (2)(b); inserted "or any other rank" after "patrolman" in subsection (5); substituted "supervisory personnel with the rank of captain or above" for "a captain" in subdivision (7)(c); and made minor changes in phraseology and style.

The 1977 amendment deleted a former subdivision (2)(a) reading "Salaries. (a) The division shall, within the limits of appropriations made available for such purpose, prepare a schedule of compen-

sation and expenses which shall be uniform within all grades and submit it to the state board of examiners for their approval"; designated the former subdivision (2)(b) as subsection (2); and deleted the former first sentence of subsection (2) reading "The base salary of supervisory personnel and patrolmen shall be fixed by the division with the approval of the state board of examiners."

Repealing Clause

Section 6 of Ch. 188, Laws 1975 read "Section 23-4739, R. C. M. 1947, is repealed."

Effective Date

Section 2 of Ch. 483, Laws 1975 read "This act is effective January 1, 1975."

31-105.1. Salaries paid out of earmarked revenue fund. All salaries of members of the highway patrol shall be paid out of the earmarked revenue fund of the highway department.

History: En. Sec. 1, Ch. 285, L. 1971.

Title of Act

An act to provide that all salaries of members of the highway patrol be paid out of funds of the highway department.

31-105.2. Reimbursement for time spent answering subpoena. A highway patrolman shall receive all regular duty pay and benefits for time spent answering a subpoena in a civil or criminal cause when he has been called to testify in connection with his official patrol duties. The department of justice may bill the person or organization requesting the issuance of the subpoena for reimbursement for the patrolman's time.

History: En. 31-105.2 by Sec. 1, Ch. 221, L. 1977.

Title of Act

An act to provide that a highway patrolman receive regular duty pay while responding to a subpoena in a civil or

criminal cause when called in connection with his official patrol duties and that the department of justice may bill the person or organization requesting the issuance of the subpoena for reimbursement for the patrolman's time.

31-110. Offenses for which arrest may be made by patrolmen—when patrolmen police officers—forbidden to act in labor disputes—temporary control of traffic in cities and towns—investigations of accidents—inspection of livestock. (1) In addition to the above duties, the highway patrol supervisor and all patrolmen may make arrests for the following offenses if committed in the presence of the supervisor or any of the patrolmen; if committed in a rural district, upon the request of a peace officer; or if committed in a city or town of less than 2,500 inhabitants, upon the request of any peace officer or the mayor of the city or town: deliberate homicide, assault with a deadly weapon, arson, criminal mischief, burglary, theft, kidnapping, illegal transportation of narcotics, or violation of the Dyer Act regarding the transportation of stolen automobiles. Such highway patrolmen have no authority and are expressly forbidden to make arrests in labor disputes or to prevent violence in connection with strikes and

may not perform any duties whatsoever in connection with labor disputes, strikes, or boycotts.

(2) Patrolmen are considered police officers for the purpose of making arrests for all offenses occurring on the highways or involving the use of motor vehicles or the registration thereof and for the purpose of serving warrants of arrest in connection with such violations.

(3) Patrolmen may stop any truck or motor vehicle in which livestock or livestock products are being transported and ascertain whether the driver of such truck or vehicle is rightfully in possession of such livestock or livestock products. If the patrolmen have good reason to believe that livestock or livestock products have been stolen, they may take possession of the same until the livestock or livestock products can be delivered into the custody of the sheriff or until such time as the facts as to the actual ownership can be ascertained.

(4) A highway patrolman has the same authority to enforce provisions of the motor carrier's licensing law as that granted the public service commission under 8-103. The highway patrol bureau shall cooperate with the public service commission and the department of highways to assure minimum duplication and maximum coordination of enforcement effort.

History: En. Sec. 10, Ch. 199, L. 1943; amd. Sec. 1, Ch. 63, L. 1965; amd. Sec. 2, Ch. 280, L. 1977; amd. Sec. 46, Ch. 359, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 280 and once by Ch. 359. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

The 1965 amendment deleted from the end of the first paragraph a clause reading "and shall not be permitted to congregate or act as a unit in one county to suppress riots or preserve the peace"; and deleted the former third paragraph, for text of which see parent volume.

Chapter 280, Laws of 1977, added the last paragraph.

Chapter 359, Laws of 1977, inserted the subsection designations; substituted "deliberate homicide" for "murder" near the

middle of the first sentence of subsection (1); inserted "criminal mischief" and substituted "theft" for "larceny" near the middle of the first sentence of subsection (1); and made minor changes in phraseology, punctuation and style.

Repealing Clause

Section 2 of Ch. 63, Laws 1965 repealed all acts parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 63, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 25, 1965.

Cross-References

Authority of members of Montana university system security department to issue traffic citations, sec. 75-8514.

Highway patrol functions transferred to division of motor vehicles, sec. 82A-1206.

Purpose of 1977 amendment by chapter 280, Sec. 8-132.

31-112. Duty of patrolman upon making an arrest, etc.

Commitment to Jail

Where driver stopped for speeding late at night had an out-of-state license, had no Montana address except "General Delivery," and could not post an appearance bond, arresting officer had no duty to sit

with the driver until his friend arrived with money for bond, and commitment to jail was proper. *State ex rel. Kotwicki v. District Court of First Judicial District*, — M —, 532 P 2d 694.

31-112.1. Check in lieu in cash. (1) In the case of traffic violations, bond may be made by personal check in lieu of cash. Highway patrolmen

or other authorized agents receiving bonds on behalf of the court may accept a personal check in lieu of cash provided that:

(a) the check is drawn on a bank domiciled in the state of Montana; and

(b) the person who writes the check in lieu of cash bond has two documents identifying him.

(2) If a check is offered in lieu of cash, the highway patrolman or other authorized agent who accepts the check is not liable in the case of non-payment.

(3) A person who writes a check in lieu of cash bond which is returned for insufficient funds is subject to prosecution under 94-6-309, and obtaining bond constitutes securing services for the purposes of that section.

History: En. 31-112.1 by Sec. 1, Ch. 295, L. 1977.

Title of Act

An act to allow bond in the case of traffic violations to be made by check in lieu of cash.

31-114. Highway patrol—fees—fines and forfeitures. All fees, fines and forfeitures collected in any court from persons apprehended or arrested by patrolmen for violation of this act and the laws and regulations relating to the use of state highways and the operation of vehicles thereon must be paid to the state treasurer of Montana and by him credited to the general fund of the state, except for that portion of the fines, as provided in section 4 [75-5304] of this act, which shall be paid into the automobile driver education account in the earmarked revenue fund; and at the time of payment of any such fee, fine or forfeiture there shall be filed with the state treasurer a complete statement showing the total of the fees, fines or forfeitures received or incurred, which statement shall give the title of the court and cause and be subscribed to by the person or officer making such payments.

History: En. Sec. 14, Ch. 199, L. 1943; amd. Sec. 10, Ch. 226, L. 1965; amd. Sec. 9, Ch. 214, L. 1969.

Compiler's Notes

Section 75-5304, referred to in this section, was repealed by sec. 12, Ch. 214, Laws 1969. For similar provisions in current law, see sec. 75-7902.

Amendments

The 1965 amendment inserted "except

the penalty assessments levied and paid as provided for in section 4 of this act, which shall be paid into the automobile driver education account in the earmarked revenue fund" after "general fund of the state."

The 1969 amendment substituted "except for that portion of the fines, as provided in section 4 of this act" for "except the penalty assessments levied and paid or provided for in section 4 of this act."

31-117. Drivers' examination section of highway patrol. There is hereby created a drivers' examination section of the Montana highway patrol, under the direct control and supervision of the Montana highway patrol board. Said board shall maintain a permanent place of business at the state capitol and shall meet at least once each month for the purpose of transacting business either as the drivers' examining board, the highway patrol board, or jointly for the two. The board shall select a chief examiner, and deputy chief examiner, as many assistant chief

examiners and examiners as it deems necessary and shall provide for the necessary clerical help.

The chief examiner, deputy chief examiner, assistant chief examiners and all examiners shall have the same qualifications as are required for members of the Montana highway patrol. The chief examiner shall rank as a captain, the deputy chief examiner as a lieutenant, the assistant chief examiners shall rank as sergeants, and the examiners shall rank as patrolmen.

History: En. Sec. 1, Ch. 267, L. 1947; amd. Sec. 1, Ch. 141, L. 1951; amd. Sec. 1, Ch. 101, L. 1957; amd. Sec. 1, Ch. 42, L. 1969.

selection of a "deputy chief examiner" by the board.

Cross-References

Highway patrol board functions transferred to division of motor vehicles, sec. 82A-1205 (2).

Amendments

The 1969 amendment provided for the

31-119. Vehicle—motor vehicle—farm tractor—school bus—bus—motorcycle. (a). * * * [Same as parent volume.]

(b) Motor vehicle. Every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails, excluding motorcycles.

(c) and (d). * * * [Same as parent volume.]

(e) Bus. Every motor vehicle designed for carrying more than ten (10) passengers and used for the transportation of persons; and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

(f) Motorcycle. Every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three (3) wheels in contact with the ground, but excluding a tractor.

History: En. Sec. 3, Ch. 267, L. 1947; amd. Sec. 1, Ch. 291, L. 1973.

Amendments

The 1973 amendment added "excluding motorcycles" to the end of subsection (b); and added subsections (e) and (f).

31-123. Chief—board. (a) Chief. The chief of the Montana highway patrol.

(b) * * * [Same as parent volume.]

History: En. Sec. 7, Ch. 267, L. 1947; amd. Sec. 1, Ch. 155, L. 1969.

Cross-References

Functions of highway patrol board and chief transferred to division of motor vehicles, secs. 82A-1205 (2), 82A-1206.

Amendments

The 1969 amendment substituted "chief" for "supervisor" in subsection (a).

31-126. What persons are exempt from license. The following persons are exempt from license hereunder:

1 to 3. * * * [Same as parent volume.]

4. A nonresident who is at least eighteen (18) years of age and who has in his immediate possession a valid chauffeur's license issued to him in his home state or country may operate a motor vehicle in this

state either as an operator or chauffeur subject to the age limits applicable to chauffeurs in this state;

5 and 6. * * * [Same as parent volume.]

History: En. Sec. 10, Ch. 267, L. 1947; amd. Sec. 1, Ch. 95, L. 1955; amd. Sec. 1, Ch. 137, L. 1961; amd. Sec. 1, Ch. 133, L. 1969.

Amendments

The 1969 amendment, in subdivision (4), deleted a requirement that a nonresident be licensed as a chauffeur in Montana before accepting employment as a chauffeur for a Montana resident.

31-127. What persons shall not be licensed. The division of motor vehicles shall not issue any license hereunder:

1. To any person, as an operator, who is under the age of sixteen (16) years, with these exceptions:

(a) The division may issue an operator's license to a person who is fifteen (15) years if he has passed a driver's education course approved by the division and the superintendent of public instruction.

(b) The division may issue a restricted license as hereinafter provided to any person who is at least thirteen (13) years of age;

2. To any person, as a chauffeur, employed by another for the principal purpose of driving a motor vehicle when in use exclusively for the transportation of property for compensation, who is under the age of eighteen (18) years, nor to any person, as a chauffeur, who is employed by another for the principal purpose of driving a motor vehicle transporting passengers for hire or transporting school children, who is under the age of eighteen (18) years;

3. To any person, as an operator or chauffeur, whose license has been suspended during the suspension, nor to any person whose license has been revoked, except as provided in section 31-149;

4 and 5. * * * [Same as parent volume.]

6. To any person, as an operator or chauffeur, who is required by this act to take an examination, unless the person shall have successfully passed such examination;

7. * * * [Same as parent volume.]

8. To any person as an operator or chauffeur, who is suffering from any form of epileptic type seizures or similar disorders characterized by lapse of consciousness or control, either temporary or prolonged, which is or may become chronic: provided that the division may in its discretion issue a license to a person suffering from epileptic type seizures or similar disorder characterized by lapse of consciousness or control, if otherwise qualified to be licensed to drive a motor vehicle, when the afflicted person can show through a written report from his attending physician that he has not experienced an epileptic type seizure or similar disorder characterized by lapse of consciousness or control for a sufficient period and that the condition is stabilized as attested to by said physician.

History: En. Sec. 11, Ch. 267, L. 1947; amd. Sec. 1, Ch. 60, L. 1955; amd. Sec. 1, Ch. 227, L. 1965; amd. Sec. 14, Ch. 94, L. 1973; amd. Sec. 1, Ch. 178, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 94 and once by Ch. 178. Neither amendatory act mentioned or in-

corporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1965 amendment changed the format of subsection (1); increased the age set out in the preliminary paragraph of subsection (1) from fifteen to sixteen; and inserted paragraph (1) (a).

Chapter 94, Laws of 1973, reduced the age specified at the end of subdivision 2 from twenty-one to eighteen years.

Chapter 178, Laws of 1973, substituted "division of motor vehicles" and "division" for "board" throughout the section; inserted "through a written report from his attending physician" following "when the afflicted person can show" in subdivision 8; substituted "a sufficient period and that the condition is stabilized as attested to

by said physician" for "a period of two (2) years and when recommended by the state health officer as being controlled medically or otherwise to the degree that the affliction will not interfere with the safe operation of a motor vehicle" at the end of subdivision 8; and made minor changes in style and phraseology.

Cross-Reference

Driver education courses, secs. 75-7901 to 75-7907.

Liability of Provider

Liability of father who provided motor-bike for his twelve-year-old son was not based on imputed negligence or family purpose doctrine, but was based on the act of providing an unlicensable minor with possession of an instrument which in his immature and incompetent hands was dangerous to other motorists. *Sedlacek v. Ahrens*, — M —, 530 P 2d 424.

31-128. Classification of chauffeurs—special restrictions. (a). * * *
[Same as parent volume.]

(b) No person who is under the age of eighteen (18) years shall drive any school bus transporting school children or any motor vehicle when in use for the transportation of persons for compensation nor in either event until he has been licensed as a chauffeur for either such purpose and the license so indicates. The board shall not issue a chauffeur's license for either such purpose unless the applicant has had at least one (1) year of driving experience prior thereto and the board is fully satisfied as to the applicant's competency and fitness to be employed.

History: En. Sec. 12, Ch. 267, L. 1947; amd. Sec. 1, Ch. 26, L. 1969; amd. Sec. 15, Ch. 94, L. 1973.

Amendments

The 1969 amendment, in subsection (b),

deleted a requirement that three people certify an applicant's good character.

The 1973 amendment reduced the age specified near the beginning of subsection (b) from twenty-one to eighteen years.

31-129. Instruction and traffic education permits and temporary licenses. (a) Any person satisfying the age requirements specified in 31-127 (1), may apply to the board for an instruction permit. The board may in its discretion, after the applicant has successfully passed all parts of the examination other than the driving test, issue to the applicant an instruction permit which shall entitle the applicant, while having such permit in his immediate possession, to drive a motor vehicle upon the public highways for a period of six (6) months when accompanied by a licensed operator or chauffeur who is occupying a seat beside the driver. In addition, the board may issue such an instruction permit to any person who is at least fourteen and one-half (14½) years of age and who is successfully participating in a traffic education course approved by the Montana highway patrol and the superintendent of public instruction. Any instruction permit so issued shall be restricted to the

operation of a motor vehicle only when accompanied by an approved instructor or licensed parent or guardian and may be further restricted to specific times and/or areas.

(b) The board upon receiving proper application may in its discretion issue a traffic education permit effective for a school year or more restricted period to an applicant who is enrolled in a traffic education program approved by the board even though the applicant has not reached the legal age to be eligible for an operator's license. Such permit shall entitle the permittee when he has such a permit in his immediate possession to operate only on a designated highway or within a designated area a motor vehicle only when an approved instructor is occupying a seat beside the permittee or a motorcycle only when under the immediate and proximate supervision of an approved instructor.

(c). * * * [Same as parent volume.]

History: En. Sec. 13, Ch. 267, L. 1947; amd. Sec. 1, Ch. 120, L. 1961; amd. Sec. 1, Ch. 55, L. 1969; amd. Sec. 1, Ch. 271, L. 1973; amd. Sec. 1, Ch. 19, L. 1974.

Amendments

The 1969 amendment, in subsection (a), substituted "satisfying the age requirement specified in 31-127 (1)" for "who is at least fifteen (15) years of age" and deleted an exception authorizing the holder of an instruction permit to operate a motorcycle.

The 1973 amendment added the third and fourth sentences to subsection (a);

substituted "traffic education" for "restricted instruction" in subsection (b); and deleted "instruction" before "permit" near the beginning of the second sentence in subsection (b).

The 1974 amendment deleted "a motor vehicle" after "operate" near the end of subdivision (b); substituted "a motor vehicle" for "but" after "designated area" near the end of subdivision (b); added "or a motorcycle only when under the immediate and proximate supervision of an approved instructor" at the end of the same subdivision; and made a minor change in punctuation.

31-130. Application for license, instruction permit or motorcycle endorsement. (a) Every application for an instruction permit, operator's or chauffeur's license or motorcycle endorsement shall be made upon a form furnished by the board. Every application shall be accompanied by the proper fee and payment of such fee shall entitle the applicant to not more than three attempts to pass the examination within a period of six (6) months from the date of application.

(b). * * * [Same as parent volume.]

(c) Whenever application is received from an applicant previously licensed by any other jurisdiction or jurisdictions, the board shall request a copy of such applicant's driving record from such previous licensing jurisdiction or jurisdictions. When received, such driving records shall become a part of the driver's record in this state with the same force and effect as though entered on the driver's record in this state in the original instance.

History: En. Sec. 14, Ch. 267, L. 1947; amd. Sec. 1, Ch. 28, L. 1969.

for applications for "motorcycle endorsement" in subsection (a) and added subsection (c).

Amendments

The 1969 amendment inserted provisions

31-131. Application of minors.

References

Castle v. Thisted, 139 M 328, 363 P 2d 724, 725.

31-134. Examination of applicants. (a) The board shall examine every applicant for an operator's, chauffeur's license, or motorcycle endorsement, except as otherwise provided in this section. Such examination shall include a test of the applicant's eyesight, his ability to read and understand highway signs regulating, warning, and directing traffic, his knowledge of the traffic laws of this state, and shall include an actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle or motorcycle. The board shall make provision for giving an examination either in the county where the applicant resides or at a place adjacent thereto reasonably convenient to the applicant within not more than thirty (30) days from the date the application is received.

(b) A classified chauffeur's license of the lowest classification specified by regulations established pursuant to the provisions of section 31-128 (a) shall be issued without examination to any individual who possesses a nonclassified chauffeur's license or who presents a certificate of operation of farm vehicles in excess of twenty-eight thousand (28,000) pounds as specified by the regulations established pursuant to the provisions of section 31-128 (a), at the time of his renewal next following passage of this act.

(c) A classified chauffeur's license of the highest classification specified by regulations established pursuant to the provisions of section 31-128 (a) shall be issued without examination to any individual who possesses a nonclassified chauffeur's license at the time of his renewal next following passage of this act, provided that the individual presents at the time of renewal a certificate of driver qualifications as specified by regulations established pursuant to the provisions of section 31-128 (a).

(d) A motorcycle endorsement as required in section (a) of this act shall be issued without examination to any individual who possesses a non-endorsed license of any type at the time of his renewal next following passage of this act, provided that the individual presents at the time of renewal a certificate of motorcycle qualifications as specified by regulations established pursuant to the provisions of this act.

History: En. Sec. 18, Ch. 267, L. 1947; amd. Sec. 1, Ch. 408, L. 1975.

Amendments

The 1975 amendment inserted "or motorcycle endorsement" near the beginning of the first sentence in subsection (a); added "or motorcycle" to the end of the second sentence of subsection (a); de-

leted a former subsection (b) which provided for issuance of licenses to prior qualified drivers; and added subsections (b) to (d). For prior version, see parent volume.

Effective Date

Section 2 of Ch. 408, Laws 1975 read "This act is effective January 1, 1976."

31-135. Licenses issued to operators and chauffeurs—renewals and expiration thereof. (a) The highway patrol board shall have authority to appoint county treasurers and other qualified officers to act as its agent or agents for the sale of drivers' licenses, and shall make necessary rules and regulations governing such sales. The board, upon payment of the fees specified in this act, (of which sum five per cent (5%) shall be retained by the county treasurers for use of the county general fund) shall issue to

every applicant qualifying therefor, an operator's or chauffeur's license as applied for, and such licenses shall contain a photograph of such licensee in such size and form as may be prescribed by the highway patrol board, a distinguishing number issued to the licensee, the full name, date of birth, resident address, and a brief description of the licensee and either a facsimile of the signature of the licensee or a space upon which he shall write his signature in pen and ink, immediately upon receipt of the license. No license shall be valid until it has been so signed by the licensee.

(b) The board shall, when any person applies for renewal of an operator's or chauffeur's license, test the applicant's eyesight, and may also, in the board's discretion, have such applicant demonstrate his physical ability to operate and to exercise ordinary and reasonable care in the operation of a motor vehicle. A person shall be deemed to have applied for renewal of a Montana operator's or chauffeur's license if such application is made within three (3) months of the expiration of such license.

(c) Licenses issued shall expire on the anniversary of the date of birth of the licensee four (4) years or less after the date of issue. Notwithstanding the foregoing provisions, the highway patrol board shall stagger initial license terms for the purpose of equalizing annual issuance of licenses and shall collect license fees proportionate to the term of such licenses.

(d) Whenever the board issues an original license to a person under the age of eighteen (18) years, such license shall be designated and clearly marked as a "provisional license." Any license so designated and marked may be suspended by the board for a period of not more than twelve (12) months, when its record discloses that the licensee, subsequent to the issuance of such license, has been guilty of careless or negligent driving. Upon renewal as applicable to operator's licenses, the board may for any reasonable cause, as shown by its records, designate the renewal of the license as provisional, otherwise, a license in usual form shall be issued subject to other provisions of the laws of Montana.

(e) It shall be unlawful for any person to have in his possession or under his control, more than one (1) Montana operator's or chauffeur's license at any one time. Licenses issued after passage of this act shall not be valid for the operation of a motorcycle until the holder thereof has completed the requirements of section 31-134 and the license has been clearly marked with the words "motorcycle endorsement."

(f) Driver license fees. Fees for driver license shall be as follows:

1. Driver's license—two dollars (\$2) per year or fraction thereof.
2. Motorcycle endorsement — fifty cents (50c) per year or fraction thereof.

History: En. Sec. 19, Ch. 267, L. 1947; amd. Sec. 1, Ch. 135, L. 1951; amd. Sec. 1, Ch. 130, L. 1953; amd. Sec. 1, Ch. 249, L. 1961; amd. Sec. 1, Ch. 228, L. 1963; amd. Sec. 1, Ch. 23, L. 1967; amd. Sec. 1, Ch. 288, L. 1971; amd. Sec. 4, Ch. 423, L. 1971; amd. Sec. 1, Ch. 409, L. 1975.

Amendments

The 1963 amendment completely rewrote subsection (b), for previous text of which see parent volume; and made a minor change in punctuation.

The 1967 amendment inserted "(of which sum * * * county general fund)"

in the second sentence of subsection (a); and made minor changes in subsections (a) and (b).

Chapter 288, Laws of 1971, substituted "the fees specified in this act" for "four dollars (\$4)" in the second sentence of subsection (a); deleted language providing for biennial expiration of licenses after "as applied for" in the second sentence of subsection (a); inserted "and such licenses" before "shall contain a photograph" in the second sentence of subsection (a); substituted the second sentence of subsection (b) for "This examination shall not be required of any applicant who has successfully completed such an examination within the preceding five (5) year period"; inserted subsection (c); redesignated former subsections (c) and (d) as subsections (d) and (e); and added subsection (f).

Chapter 423, Laws of 1971, reduced the age specified in the first sentence of the present subsection (d) from 21 to 18 years.

The 1975 amendment added the second sentence to subsection (e); and added subdivision (f) 2.

Effective Dates

Section 2 of Ch. 228, Laws 1963 provided the act should be in effect upon its passage and approval. Approved March 9, 1963.

Section 2 of Ch. 409, Laws 1975 read "This act is effective January 1, 1976."

Validity of Amendment

The 1961 amendment of this section [House Bill No. 342] was not rendered invalid because the deciding vote therein was cast by the lieutenant governor on the third reading, where at that time the senators then present and voting, were equally divided. *State ex rel. Easbey v. Highway Patrol Board*, 140 M 383, 372 P 2d 930, 939.

31-135.1. Indication on driver's license of intent to make anatomical gift. The department of justice shall provide on each operator's or chauffeur's license a space for indicating when the licensee has executed a document under 69-2318 of intent to make a gift of all or part of his body under the Uniform Anatomical Gift Act. The department shall also furnish the licensee a means of revoking the document of gift upon the license.

History: En. 31-135.1 by Sec. 1, Ch. 28, L. 1977.

Gift Act has been made or revoked; providing a delayed effective date.

Title of Act

An act to provide a space on a driver's license for indicating when a document of gift under the Uniform Anatomical

Effective Date

Section 2 of Ch. 28, Laws 1977 read "This act is effective January 1, 1978 for licenses renewed after that date."

31-138. Duplicate certificates. In the event that an instruction permit or operator's or chauffeur's license issued under the provisions of this act is lost or destroyed, the person to whom the same was issued may, upon the payment of a fee of one dollar (\$1.00), obtain a duplicate, or substitute thereof, upon furnishing proof satisfactory to the board that such permit or license has been lost or destroyed.

History: En. Sec. 22, Ch. 267, L. 1947; amd. Sec. 1, Ch. 36, L. 1953; amd. Sec. 16, Ch. 121, L. 1965.

Amendment

The 1965 amendment increased the fee for duplicate certificates from 50¢ to \$1.00.

31-142. Authority of board to cancel licenses. (a) The board is hereby authorized to cancel any operator's or chauffeur's license upon determining that the licensee was not entitled to the issuance thereof hereunder or that since the issuance thereof said licensee has become ineligible, such ineligibility shall be determined pursuant to the provisions of section 31-127, or that said licensee failed to give the required or correct information in his application or committed any fraud in making such application.

(b). * * * [Same as parent volume.]

History: En. Sec. 26, Ch. 267, L. 1947;
amd. Sec. 1, Ch. 219, L. 1973.

since the issuance thereof said licensee has become ineligible, such ineligibility shall be determined pursuant to the provisions of section 31-127" in subsection (a).

Amendments

The 1973 amendment inserted "or that

31-145. When court to forward license to division and report convictions. (a) Whenever any person is convicted of any offense for which this act makes mandatory the revocation of the operator's or chauffeur's license of such person by the division of motor vehicles of the department of justice, the court in which such conviction is had shall require the surrender to it of all operator's and chauffeur's licenses then held by the person so convicted. The court shall thereupon, within 5 days, forward the license to the division and at the same time forward a record of such conviction to the division, providing that if such person does not possess a driver's license the court shall so indicate in its report to the division.

(b) Every court having jurisdiction over offenses committed under any act of this state or municipal ordinance regulating the operation of motor vehicles on highways, shall forward, within 5 days, to the division a record of the conviction or forfeiture of bail, not vacated, of any person in the court for a violation of any such laws, other than regulations governing standing or parking, and may recommend the suspension of the operator's or chauffeur's license of the person so convicted. The court may also recommend that the division issue a restricted probationary license in lieu of the suspension required in 31-149(b) on the condition that the individual attend a driver improvement school or an alcohol treatment program if one is available. The division shall issue a restricted probationary license unless the person otherwise is not entitled to a Montana operator's or chauffeur's license.

(c) and (d) * * * [Same as parent volume.]

History: En. Sec. 29, Ch. 267, L. 1947;
amd. Sec. 1, Ch. 165, L. 1957; amd. Sec. 1,
Ch. 27, L. 1961; amd. Sec. 1, Ch. 386, L.
1973; amd. Sec. 3, Ch. 430, L. 1977.

The 1977 amendment substituted "division of motor vehicles of the department of justice" in the first sentence of subsection (a) for "board"; substituted "division" throughout the remainder of subsections (a) and (b) for "board"; added the last two sentences to subsection (b); and made minor changes in phraseology, punctuation and style.

Amendments

The 1973 amendment inserted "within five (5) days" in the second sentence of subsection (a) and in subsection (b).

31-146. Mandatory revocation of license by board or chief upon proper authority. The board or chief upon proper authority shall revoke the license or operating privilege of any operator or chauffeur upon receiving a record of such operator's or chauffeur's conviction or forfeiture of bail not vacated of any of the following offenses, when such conviction or forfeiture has become final:

- (1) negligent homicide resulting from the operation of a motor vehicle;
- (2) driving a motor vehicle while under the influence of alcohol or narcotic drug, or willfully or knowingly under the influence of any other drug to a degree which renders him incapable of safely driving a motor vehicle, or a combination thereof except as provided in 31-149;

- (3) any felony in the commission of which a motor vehicle is used;
- (4) failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;
- (5) perjury or the making of a false affidavit or statement under oath to the board under this act or under any other law relating to the ownership or operation of motor vehicles;
- (6) conviction or forfeiture of bail not vacated, upon three charges of reckless driving committed within a period of 12 months.

History: En. Sec. 30, Ch. 267, L. 1947; amd. Sec. 1, Ch. 192, L. 1957; amd. Sec. 1, Ch. 125, L. 1961; amd. Sec. 2, Ch. 155, L. 1969; amd. Sec. 47, Ch. 359, L. 1977; amd. Sec. 2, Ch. 430, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 359 and once by Ch. 430. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

The 1969 amendment substituted "chief" for "supervisor" in the first paragraph and inserted "or willfully * * * motor vehicle" in subdivision (2).

Chapter 359, Laws of 1977, substituted "negligent homicide" for "manslaughter" at the beginning of subdivision (1); and made minor changes in phraseology, punctuation and style.

Chapter 430, Laws of 1977, substituted "alcohol" for "intoxicating liquor" in subdivision (2); and added "except as provided in 31-149" at the end of subdivision (2).

31-147. Authority of board to suspend license or driving privilege or issue probationary license. (a) The board is hereby authorized to suspend the license or driving privilege of an operator or chauffeur without preliminary hearing upon a showing by its records or other sufficient evidence that the licensee:

- 1. Has been involved as a driver in any accident resulting in the death or personal injury of another or serious property damage;
- 2. Has been convicted with such frequency of serious offenses against traffic regulations governing the movement of vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highways;
- 3. Is an habitually reckless or negligent driver of a motor vehicle;
- 4. Is incompetent to drive a motor vehicle;
- 5. Has permitted an unlawful or fraudulent use of such license as specified in section 31-153;
- 6. Has committed an offense in another state which if committed in this state would be grounds for suspension or revocation; or
- 7. Has falsified his date of birth on his application for a driver's license.

(b). * * * [Same as parent volume.]

(c) Upon suspending the license of any person or upon placing such person on probation, as hereinbefore in this section authorized, the board shall immediately notify the licensee in writing and upon his request shall afford him an opportunity for a hearing as early as practical within not to exceed twenty (20) days after receipt of such request in the

county wherein the licensee resides unless the board and the licensee agree that such hearing may be held in some other county. Upon such hearing the chief or his duly authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a re-examination of the licensee. Upon such hearing the board shall either rescind its order of suspension or probation, or, good cause appearing therefor, may affirm, reduce or extend the period of probation or suspension of such license.

History: En. Sec. 31, Ch. 267, L. 1947; amd. Sec. 1, Ch. 101, L. 1961; amd. Sec. 1, Ch. 137, L. 1969.

Amendments

The 1969 amendment deleted former subdivision (a)(1) authorizing suspension for "offense for which mandatory revocation of license is required upon conviction," designated former subdivisions (a)(2) to (a)(8) as (a)(1) to (a)(7), added "as specified in section 31-153" to subdivision (a)(5), and substituted "chief" for "supervisor" in subsection (c).

Suspension of License Not Punishment

The purpose and nature of the suspension of a driver's license is for the protection of the unsuspecting public and does not constitute "punishment" as understood within the meaning of the law, so that highway patrol board can take into consideration past driving violations before a previous suspension of a driver's license in suspending his license again. In re France, 147 M 283, 411 P 2d 732.

31-149. Period of suspension or revocation. (a) The division may not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways for a period of more than one (1) year, except as permitted under sections 31-148, 31-155, 31-184.1, 53-424, and 53-430, R.C.M. 1947.

(b) Any person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked shall not be entitled to have such license or privilege renewed or restored unless the revocation was for a cause which has been removed, except that after the expiration of the period of such revocation or suspension, such person may make application for a new license as provided by law, but the division may not then issue a new license unless and until it is satisfied after investigation of character, habits, and driving ability of such person that it will be safe to grant the privilege of driving a motor vehicle on the public highways. Provided, however, when any person is convicted or forfeits bail or collateral not vacated for the offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or narcotic drug, or knowingly or willingly under the influence of any other drug to a degree which renders him incapable of safely driving a motor vehicle or a combination thereof, the division shall, upon receiving a report of such conviction or forfeiture of bail or collateral not vacated, suspend the license or driving privilege of such person for a period of 6 months. Upon receiving a report of a conviction or forfeiture of bail or collateral for a second, third, or subsequent offense within 5 years of the first offense, the division shall revoke the license or driving privilege of such person for a period of 1 year.

(c) The revocation period for all revocations made mandatory by section 31-146, R.C.M. 1947, shall be one (1) year, except as provided in subsection (b) of this section.

History: En. Sec. 33, Ch. 267, L. 1947; amd. Sec. 1, Ch. 126, L. 1957; amd. Sec. 1, Ch. 161, L. 1961; amd. Sec. 1, Ch. 339, L. 1969; amd. Sec. 4, Ch. 430, L. 1977.

Compiler's Notes

Section 53-424 referred to in subsection (a) was repealed by Sec. 4, Ch. 184, Laws 1974.

Amendments

The 1969 amendment inserted "or knowingly * * * a motor vehicle" after "narcotic drug" in subsection (b) and added subsection (c).

The 1977 amendment substituted "division" throughout the section for "board"; inserted "31-184.1" in the enu-

meration of sections at the end of subsection (a); substituted "alcohol" in the second sentence of subsection (b) for "intoxicating liquor"; deleted "or revoke" after "suspend" near the end of the second sentence of subsection (b); increased the period of suspension at the end of the second sentence of subsection (b) from 60 days to 6 months; inserted "second, third, or" in the last sentence of subsection (b); deleted "suspend or" before "revoke" in the last sentence of subsection (b); and made minor changes in phraseology, punctuation and style.

References

In re France, 147 M 283, 411 P 2d 732.

31-156. Permitting unauthorized minor to drive.

Knowingly

Instructing twelve-year-old son not to ride motorbike on highway did not relieve father of liability for knowingly permitting such offense, since the basis of his

liability was the endangerment of others by the entrusting of a motorbike to an unlicensable minor. *Sedlacek v. Ahrens*, — M —, 530 P 2d 424.

31-163. Driver license compact enacted—text. This act shall be known and may be cited as the "Driver License Compact."

ARTICLE I—FINDINGS AND DECLARATION OF POLICY

(a) The party states find that:

(1) The safety of their streets and highways is materially affected by the degree of compliance with state laws and local ordinances relating to the operation of motor vehicles.

(2) Violation of such a law or ordinance is evidence that the violator engages in conduct which is likely to endanger the safety of persons and property.

(3) The continuance in force of a license to drive is predicated upon compliance with laws and ordinances relating to the operation of motor vehicles, in whichever jurisdiction the vehicle is operated.

(b) It is the policy of each of the party states to:

(1) Promote compliance with the laws, ordinances, and administrative rules and regulations relating to the operation of motor vehicles by their operators in each of the jurisdictions where such operators drive motor vehicles.

(2) Make the reciprocal recognition of licenses to drive and eligibility therefor more just and equitable by considering the over-all compliance with motor vehicle laws, ordinances and administrative rules and regulations as a condition precedent to the continuance or issuance of any license by reason of which the licensee is authorized or permitted to operate a motor vehicle in any of the party states.

ARTICLE II—DEFINITIONS

As used in this compact:

(a) "State" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(b) "Home state" means the state which has issued and has the power to suspend or revoke the use of the license or permit to operate a motor vehicle.

(c) "Conviction" means a conviction of any offense related to the use or operation of a motor vehicle which is prohibited by state law, municipal ordinance or administrative rule or regulation, or a forfeiture of bail, bond or other security deposited to secure appearance by a person charged with having committed any such offense, and which conviction or forfeiture is required to be reported to the licensing authority.

ARTICLE III—REPORTS OF CONVICTION

The licensing authority of a party state shall report each conviction of a person from another party state occurring within its jurisdiction to the licensing authority of the home state of the licensee. Such report shall clearly identify the person convicted; describe the violation specifying the section of the statute, code or ordinance violated; identify the court in which action was taken; indicate whether a plea of guilty or not guilty was entered, or the conviction was a result of the forfeiture of bail, bond or other security; and shall include any special findings made in connection therewith.

ARTICLE IV—EFFECT OF CONVICTION

(a) The licensing authority in the home state, for the purposes of suspension, revocation or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported, pursuant to Article III of this compact, as it would if such conduct had occurred in the home state, in the case of convictions for:

(1) Manslaughter or negligent homicide resulting from the operation of a motor vehicle;

(2) Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug, or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle;

(3) Any felony in the commission of which a motor vehicle is used;

(4) Failure to stop and render aid in the event of a motor vehicle accident resulting in the death or personal injury of another.

(b) As to other convictions, reported pursuant to Article III, the licensing authority in the home state shall give such effect to the conduct as is provided by the laws of the home state.

(c) If the laws of a party state do not provide for offenses or violations denominated or described in precisely the words employed in subdivision (a) of this article, such party state shall construe the denominations and descriptions appearing in subdivision (a) hereof as being applicable to and identifying those offenses or violations of a substantially similar nature, and the laws of such party state shall contain such provisions as

may be necessary to ensure that full force and effect is given to this article.

ARTICLE V—APPLICATIONS FOR NEW LICENSES

Upon application for a license to drive, the licensing authority in a party state shall ascertain whether the applicant has ever held, or is the holder of a license to drive issued by any other party state. The licensing authority in the state where application is made shall not issue a license to drive to the applicant if:

(1) The applicant has held such a license, but the same has been suspended by reason, in whole or in part, of a violation and if such suspension period has not terminated.

(2) The applicant has held such a license, but the same has been revoked by reason, in whole or in part, of a violation and if such revocation has not terminated, except that after the expiration of one year from the date the license was revoked, such person may make application for a new license if permitted by law. The licensing authority may refuse to issue a license to any such applicant if, after investigation, the licensing authority determines that it will not be safe to grant to such person the privilege of driving a motor vehicle on the public highways.

(3) The applicant is the holder of a license to drive issued by another party state and currently in force unless the applicant surrenders such license.

ARTICLE VI—APPLICABILITY OF OTHER LAWS

Except as expressly required by provisions of this compact, nothing contained herein shall be construed to affect the right of any party state to apply any of its other laws relating to licenses to drive to any person or circumstance, nor to invalidate or prevent any driver license agreement or other co-operative arrangement between a party state and a nonparty state.

ARTICLE VII—COMPACT ADMINISTRATOR AND INTERCHANGE OF INFORMATION

(a) The head of the licensing authority of each party state shall be the administrator of this compact for his state. The administrators, acting jointly, shall have the power to formulate all necessary and proper procedures for the exchange of information under this compact.

(b) The administrator of each party state shall furnish to the administrator of each other party state any information or documents reasonably necessary to facilitate the administration of this compact.

ARTICLE VIII—ENTRY INTO FORCE AND WITHDRAWAL

(a) This compact shall enter into force and become effective as to any state when it has enacted the same into law.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until six (6) months after the executive head of the withdrawing state has given notice of the withdrawal to the executive heads of all other party states. No withdrawal shall affect the validity or applicability by the licensing authorities of states remaining party to the compact of any report of conviction occurring prior to the withdrawal.

ARTICLE IX—CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: En. Sec. 1, Ch. 154, L. 1963.

Title of Act

An act to establish a stable and uniform basis for interstate co-operation in driver licensing and the reporting of convictions and to be known as the Driver License Compact; setting forth the basic purposes of the compact; defining certain terms used in act; requiring party state to report convictions to licensing authority of home state of licensee; providing party state may give same effect of conviction regardless of jurisdiction of occurrence; providing that license authority in party state shall not issue license to party whose license has been suspended, revoked or to

party who fails to surrender license of another party state; providing that adoption of compact will not nullify existing statutes; providing for administrator of act; providing for entry and withdrawal from compact; providing for construction and severability of act; providing that if any part of act held unconstitutional it shall not affect remaining parts of act; defining "licensing authority" and "executive head"; providing authority to furnish information to member states; providing that administrator shall not be entitled to additional compensation; requiring agencies or court to report to state agency; repealing all acts or parts of acts in conflict herewith.

31-164. Highway patrol board as licensing authority—information and documents furnished. As used in the compact, the term "licensing authority" with reference to this state, shall mean the Montana highway patrol board. Said board shall furnish to the appropriate authorities of any other party state any information or documents reasonably necessary to facilitate the administration of Articles III, IV and V of the compact.

History: En. Sec. 2, Ch. 154, L. 1963.

31-165. Reimbursement of compact administrator. The compact administrator provided for in Article VII of the compact shall not be entitled to any additional compensation on account of his service as such administrator, but shall be entitled to expenses incurred in connection with his duties and responsibilities as such administrator, in the same manner as

for expenses incurred in connection with any other duties or responsibilities of his office or employment.

History: En. Sec. 3, Ch. 154, L. 1963.

31-166. Governor as executive head. As used in the compact, with reference to this state, the term "executive head" shall mean the governor.

History: En. Sec. 4, Ch. 154, L. 1963.

31-167. Report to highway patrol board of suspension or revocation of licenses. Any court or other agency of this state, or a subdivision thereof, which has jurisdiction to take any action suspending, revoking or otherwise limiting a license to drive, shall report any such action and the adjudication upon which it is based to the Montana highway patrol board within five (5) days on forms furnished by the Montana highway patrol board.

History: En. Sec. 5, Ch. 154, L. 1963.

31-168. Offenses furnishing ground for suspension or revocation of license. Items enumerated in Article IV (a), subsections (1), (2), (3) and (4) [31-163] of this act refer specifically to sections 94-2507, 32-2142, 94-114 and 32-1202, Revised Codes of Montana, 1947, respectively.

In addition to convictions mentioned above the Montana highway patrol board for the purpose of suspension, revocation or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported as it would if such conduct had occurred in this state for convictions of: 1. perjury or the making of a false affidavit relating to the ownership or operation of a motor vehicle (31-154, Revised Codes of Montana, 1947) and; 2. three (3) convictions of reckless driving committed within a period of twelve (12) months (32-2143, Revised Codes of Montana, 1947).

History: En. Sec. 6, Ch. 154, L. 1963.

in this section were repealed by Sec. 32 of Ch. 513, Laws 1973. See secs. 94-2-101(15) and 94-5-103.

Compiler's Notes

Sections 94-114 and 94-2507 referred to

31-169. Review of administrative actions. Any act or omission of any official or employee of this state done or omitted pursuant to, or in enforcing, the provisions of the "Driver License Compact" shall be subject to review pursuant to the provisions of section 31-152, Revised Codes of Montana, 1947, but any review of the validity of any conviction reported pursuant to the compact shall be limited to establishing the identity of the person so convicted.

History: En. Sec. 8, Ch. 154, L. 1963.

pealed all acts or parts of acts in conflict therewith.

Repealing Clause

Section 7 of Ch. 154, Laws 1963 re-

31-170. Authority of board to issue identification cards. The Montana highway patrol board is hereby authorized to issue identification

cards to any person over the age of eighteen (18) years not the holder of a valid driver's license.

History: En. Sec. 1, Ch. 53, L. 1971.

board to issue identification cards to persons over eighteen (18) years of age.

Title of Act

An act to authorize the highway patrol

31-171. Rules and regulations for identification cards. The highway patrol board shall formulate reasonable rules and regulations for the application, issuing identification cards and cancellation thereof, and require the furnishing of such information necessary for the purpose of this act.

History: En. Sec. 2, Ch. 53, L. 1971.

31-172. Repealed.

Repeal

Section 31-172 (Sec. 3, Ch. 53, L. 1971), relating to immunity of public entities for

inaccurate identification cards, was repealed by Sec. 9, Ch. 234, Laws 1977.

31-173. Agents for issuance of identification cards. The highway patrol board shall have authority to appoint county treasurer and other qualified officers to act as its agent for the issuance of such identification cards.

History: En. Sec. 4, Ch. 53, L. 1971.

31-174. Fees for identification cards. Fees not in excess of one dollar (\$1) for such identification cards shall be collected and credited to a revolving fund which shall be known as the Montana Highway Patrol Identification Card Fund. Such fund shall be used by the Montana highway patrol to defray the cost of issuing identification cards.

History: En. Sec. 5, Ch. 53, L. 1971.

31-175. Purpose. This act is predicated upon the belief and philosophy that innocent drivers and other innocent passengers and pedestrians have a constitutional right to live, free from fear of death or injury from habitual traffic offenders. Further, it is the purpose of this act to reduce the number of motor vehicle accidents in this state, to provide greater safety to the motoring public and others, by denying to the habitual traffic offenders the privilege of operating a motor vehicle upon the public streets and highways of this state.

History: En. 31-175 by Sec. 1, Ch. 362, L. 1974.

viction points leading to revocation of driving privileges; providing for hearings, penalties and appeal procedures; and providing an effective date of January 1, 1975.

Title of Act

An act relating to "habitual traffic offenders" providing for a system of con-

31-176. Legislative intent. It is the legislative intent of this act:

(1) to establish criteria and procedures by which persons, who have demonstrated their apparent indifference for the safety and welfare of

others and their disrespect for the laws of this state and its political subdivisions and their disregard for the orders of its courts and administrative agencies, may be adjudged habitual traffic offenders; and

(2) to impose increased deprivation of the privilege to operate a motor vehicle upon these persons.

History: En. 31-176 by Sec. 2, Ch. 362, L. 1974.

31-177. Definitions. As used in this act, the following definitions apply:

(1) "Habitual traffic offender" means any person who, within a 5-year period from and after passage of this act, accumulates 30 or more conviction points according to the schedule specified in this subsection:

(a) deliberate homicide resulting from the operation of a motor vehicle, 15 points;

(b) mitigated deliberate homicide or negligent homicide resulting from operation of a motor vehicle, 12 points;

(c) any offenses punishable as a felony under the motor vehicle laws of Montana or any felony in the commission of which a motor vehicle is used, 12 points;

(d) driving while under the influence of intoxicating liquor or narcotics or drugs of any kind, 10 points;

(e) operating a motor vehicle while his license to do so has been suspended or revoked, 10 points;

(f) failure of the driver of a motor vehicle involved in an accident resulting in death or injury to any person to stop at the scene of the accident and give the required information and assistance, 8 points;

(g) willful failure of the driver involved in an accident resulting in property damage of \$250 to stop at the scene of the accident and give the required information or to otherwise fail to report an accident in violation of the law, 4 points;

(h) reckless driving, 5 points;

(i) illegal drag racing or engaging in a speed contest in violation of the law, 6 points;

(j) operating a motor vehicle without a license to do so, 6 points (this subsection (j) does not apply to operating a motor vehicle within a period of 180 days from the date the license expired);

(k) speeding, 3 points;

(l) all other moving violations, including operation of a motor vehicle without a license to do so when the license has expired in the previous 180 days, 2 points. There shall be no multiple application of cumulative points when two or more charges are filed involving a single occurrence. If there are two or more convictions involving a single occurrence, only the number of points for the specific conviction carrying the highest points shall be chargeable against that defendant.

(2) "Conviction" means a finding of guilt by duly constituted judicial authority, a plea of guilty, or a forfeiture of bail, bond, or other security

deposited to secure appearance by a person charged with having committed any offense relating to the use or operation of a motor vehicle which is prohibited by law, ordinance, or administrative order.

(3) "Administrator" means the Montana highway patrol chief.

(4) "Bureau" means the Montana highway patrol bureau.

(5) "License" means any type of license or permit to operate a motor vehicle.

History: En. 31-177 by Sec. 3, Ch. 362, L. 1974; amd. Sec. 48, Ch. 359, L. 1977.

Amendments

The 1977 amendment substituted "deliberate homicide" in subdivision (1)(a) for "first or second degree murder"; substituted "mitigated deliberate homicide or negligent homicide" in subdivision (1)(b)

for "voluntary or involuntary manslaughter"; substituted the parenthetical clause in subdivision (1)(j) for "except as hereinafter provided: operating a motor vehicle while license has expired within a period of one hundred eighty days"; combined subdivisions (1)(l) and (1)(m); and made minor changes in phraseology, punctuation and style.

31-178. Administrator's duties. Whenever it appears from the records maintained in the bureau that a person's driving record brings him within the definition of an habitual traffic offender, as defined in section 3 (1) [31-177(1)], the administrator shall forthwith certify two (2) copies of that person's driving record and two (2) copies of all relevant abstracts of conviction. One (1) copy of the record and abstracts shall be certified to the attorney general of the state of Montana, and one (1) copy of the record and abstracts shall be certified to the county attorney for the county wherein the person is found. If the person is not licensed by Montana to drive a motor vehicle, but is licensed in another state, the administrator may certify the copy of the records and abstracts to the attorney general and, also, to the county attorney for the county in which the person is found or, in the alternative, to the county attorney for the county of Lewis and Clark, state of Montana.

History: En. 31-178 by Sec. 4, Ch. 362, L. 1974.

31-179. County attorney to file verified complaint. Immediately upon receiving the certified documents from the administrator, the county attorney shall, in the name of the state on the relation of the administrator, file a verified complaint with the district court for a civil proceeding against the person named in the certified document and such documents shall be a part of the verified complaint.

History: En. 31-179 by Sec. 5, Ch. 362, L. 1974.

31-180. Notification of attorney general—his duties. Immediately upon the filing of the verified complaint under section 5 [31-179], the county attorney shall notify the attorney general that the verified complaint has been filed. If the county attorney fails to file the verified complaint within a reasonable time, the attorney general may order the county attorney to file the verified complaint, or, in the alternative, the attorney

general may file the verified complaint under section 5 [31-179] in the proper county as above set forth.

History: En. 31-180 by Sec. 6, Ch. 362,
L. 1974.

31-181. Abstracts admissible as evidence. Official abstracts of the records of convictions and bond forfeitures in the custody of the administrator, certified in writing by the administrator to be a correct account of the said convictions and bond forfeitures, may be admitted in evidence in any judicial proceeding under this act upon establishing the proper foundation.

History: En. 31-181 by Sec. 7, Ch. 362,
L. 1974.

31-182. Court to issue show cause order. The court in which the verified complaint is filed shall advance the proceeding upon the docket and shall enter an order, which incorporates the verified complaint, to show cause why the person named therein should not be adjudged an habitual traffic offender.

History: En. 31-182 by Sec. 8, Ch. 362,
L. 1974.

31-183. Service of process. Service of process shall be made in the same manner as is allowed in any other civil action in this state.

History: En. 31-183 by Sec. 9, Ch. 362,
L. 1974.

31-184. Court hearing. At the time and place designated in the order, the court shall hold a hearing upon the show cause order. If the court finds that the defendant is not the person named in the verified complaint, or that he is not an habitual traffic offender as defined in section 3 (1) [31-177(1)], the proceedings shall be dismissed. If the court finds that the defendant is the same person named in the verified complaint and that the defendant is an habitual traffic offender as defined in section 3 (1) [31-177(1)], the court shall so find and adjudge the defendant an habitual traffic offender, and by appropriate order direct the person so adjudged to surrender to the court his license to operate a motor vehicle on the streets and highways of this state. Upon a finding adverse to the defendant, the clerk of the court wherein the hearing is held, shall file with the bureau a copy of the court's order together with the defendant's license. If the proceeding is dismissed, the clerk of the court wherein the hearing is held, shall file with the bureau a copy of the court's order dismissing the proceeding, which order shall state the ground, or grounds, upon which the dismissal was based, and shall specify the court findings on the conviction points which have been accrued by the defendant.

History: En. 31-184 by Sec. 10, Ch. 362,
L. 1974.

31-184.1. Department to revoke license of habitual offender—method of removal of points upon revocation. Upon receipt of a court order de-

declaring an habitual offender, the department shall revoke the driver's license or driving privilege of the individual named in the order for a period of three (3) years from the date of the order. Additionally, the department shall remove from that individual's record those habitual offender points which were certified to the county attorney in the certification required by section 31-178.

History: En. 31-184.1 by Sec. 1, Ch. 176, L. 1975.

Title of Act

An act to establish a revocation of a license of an habitual offender and a method of removing points assessed to an habitual offender.

31-185. Penalties. No person who has been adjudged an habitual traffic offender shall be issued a license to operate a motor vehicle in this state until:

(1) a period of three (3) years has elapsed from the date of the final order of the court adjudging the person an habitual traffic offender; and

(2) the person has met all the requirements of all applicable laws and rules and regulations relating to the licensing of motor vehicle operators in this state; and

(3) the person files with the bureau, and maintains for a period of three (3) years, proof of his financial responsibility in the limits required by law.

History: En. 31-185 by Sec. 11, Ch. 362, L. 1974.

31-186. Unlawful for habitual traffic offender to operate motor vehicle. It shall be unlawful for any person who has been adjudged an habitual traffic offender under the provisions of this act to operate any motor vehicle in this state while the order of the court prohibiting such operation remains in effect.

History: En. 31-186 by Sec. 12, Ch. 362, L. 1974.

31-187. Habitual traffic offender operating motor vehicle guilty of misdemeanor. Any person found to be an habitual traffic offender under this act, and who thereafter operates a motor vehicle in this state while the order of the court prohibiting such operation remains in effect, shall be guilty of a misdemeanor, and upon conviction thereof shall be imprisoned for a period of not more than one (1) year or fined not more than one thousand dollars (\$1,000), or both. Provided, however, that, in cases wherein the prohibited operation of a motor vehicle by an habitual traffic offender is necessitated in a situation of extreme emergency in order to save life, limb, or property, he shall not be deemed guilty of a violation under this act.

History: En. 31-187 by Sec. 13, Ch. 362, L. 1974.

31-188. When defendant certified for trial. For the purpose of enforcing the provisions of this act, in any case in which the defendant is charged with operating a motor vehicle while his license to do so is sus-

pending or revoked, or is charged with driving without a license, the court, before hearing such charge, shall ascertain whether the defendant has been adjudged an habitual traffic offender and by reason of that judgment is prohibited from operating a motor vehicle in this state. If the court determines that the defendant has been so adjudged and that that judgment remains in effect, the court shall certify the case to the district court of its jurisdiction for trial.

History: En. 31-188 by Sec. 14, Ch. 362, L. 1974; amd. Sec. 1, Ch. 109, L. 1975.

places; and substituted "before hearing such charge" for "after hearing such charge" after "the court" in the first sentence.

Amendments

The 1975 amendment deleted "and found guilty of" after "is charged with" in two

31-189. Construction. Nothing contained in this act shall be construed as to repeal, modify, or amend any other laws or parts of laws, or any existing ordinance of any political subdivision relating to the operation or licensing of motor vehicles, the licensing of persons to operate motor vehicles or providing penalties for the violation thereof; nor shall anything in this act be construed so as to preclude the exercise of regulatory powers of any division, agency, department or political subdivision of this state or of the federal government having the statutory power to regulate the operation and licensing of motor vehicles and the licensing of motor vehicle operators.

History: En. 31-189 by Sec. 15, Ch. 362, L. 1974.

31-190. Severability. If any provision of this act is declared unconstitutional or the applicability thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application and to this end the provisions of this act are declared to be severable and the constitutionality of the remainder of this act and the applicability thereof to other persons and circumstances shall not be affected thereby.

History: En. 31-190 by Sec. 16, Ch. 362, L. 1974.

Effective Date

Section 17 of Ch. 362, Laws 1973 read "This act is effective on January 1, 1975."

31-191. Purpose. The toll of accidents, personal injuries, and deaths resulting from the operation of motor vehicles remains a matter of great concern to the legislature. The failure to apply proper driving techniques in the operation of vehicles and improper driving attitudes and habits on the part of operators constitute major factors in a substantial portion of both fatal and nonfatal automobile accidents. Current efforts to improve driver skills, responsibilities, attitudes, and habits have not proved adequate to stem the accident, injury, and death toll. The public interest in the cause of highway safety will be well served by additional methods of driver rehabilitation and improvement and the establishment of programs

of rehabilitative instruction, driver improvement, and direction for drivers with poor driving records.

History: En. 31-191 by Sec. 1, Ch. 526, L. 1977. tation program in the department of justice; and providing for procedures to contribute toward improving drivers' driving attitudes, habits, and techniques.

Title of Act

An act providing for a driver rehabili-

31-192. Establishment of driver improvement program—participation by offending drivers. (1) The department of justice may establish by administrative rules a driver rehabilitation and improvement program or programs which may consist of classroom instruction in rules of the road, driving techniques, defensive driving, driver attitudes and habits, actual on-the-road driver's training, and other such subjects or tasks designed to contribute to proper driving attitudes, habits, and techniques.

(2) Official participation in such driver rehabilitation and improvement program is limited to those persons whose operator's license to operate or privilege of operating a motor vehicle in the state of Montana is subject to suspension or revocation as a result of a violation of the traffic laws of this state.

(3) Notwithstanding any provision of this act inconsistent with any other law of the state of Montana, the enforcement of any suspension or revocation order which constitutes the basis for any person's participation in the driver rehabilitation and improvement program provided for herein may be stayed if that person complies with the requirements established for the driver improvement program.

(4) In the event a person's driver's license has been surrendered prior to his selection for participation in the driver rehabilitation and improvement program, the license may be returned upon receipt of his agreement to participate in the program.

(5) The stay of enforcement of any suspension or revocation order shall be terminated and the order of suspension or revocation enforced if a person declines to participate in the driver rehabilitation and improvement program or fails to meet the attendance or other requirements established for participation in the program.

(6) Nothing in this act creates a right to be included in any program established under this act.

(7) The department of justice may establish a schedule of fees which may be charged those persons participating in the driver improvement and rehabilitation program, which fees shall be used to help defray costs of maintaining the program.

(8) A person may be referred to this program by a driver improvement analyst, city judge, justice of the peace, judge of a district court of the state of Montana, or a hearing examiner of the department of justice.

History: En. 31-192 by Sec. 2, Ch. 526, L. 1977.

CHAPTER 2—HIGHWAY PATROLMEN'S RETIREMENT SYSTEM

Section 31-201. Definitions.

31-201.1. Retirement system.

31-205. Payments into the Montana highway patrolmen's retirement account—investment.

31-206. Rules—actuarial data—protection of funds.

31-207. Membership.

31-208. Computation of the service of a contributor.

31-209. **Payments by contributors.**31-210. **Contributions by the state of Montana.**

31-211. Retirement.

31-213. Service retirement allowance.

31-215. Involuntary retirement allowance.

31-220. Monthly payments of retirement allowances.

31-221. Exemption from taxes and execution.

31-221.1. Withholding of group insurance premium from retirement benefit.

31-222. Nomination of beneficiary.

31-223. Military service.

31-224. Fraud—correction of errors.

31-228. Optional retirement allowance.

31-230. Dormant savings accounts—transfer—subsequent re-entry to membership.

31-231. Cost of living.

31-201. **Definitions.** Unless the context requires otherwise, the following definitions apply in this act:

(1) "Accumulated deductions" means the total of the amounts deducted from the salary of a contributor, paid into the fund, and standing to his credit in the fund, together with the regular interest thereon.

(2) "Department" means the public employees' retirement division of the department of administration.

(3) "Beneficiary" means a person nominated to receive benefits under this chapter by a member's written designation, duly acknowledged and filed with the department.

(4) "Retired patrolman" means a person in receipt of a retirement allowance under this act.

(5) "Board" means the public employees' retirement board provided for in 82A-210.

(6) "Compulsory retirement age" means 60 years of age.

(7) "Contributor" means a person who has accumulated deductions in the fund standing to his credit.

(8) "Final salary" means the average annual compensation received by a contributor, before any deductions have been made and exclusive of maintenance, allowances, and expenses, for any 3 years of continuous service upon which contributions have been made or, in the event a member has not served 3 years, the total compensation earned divided by the number of years served. Lump-sum payments for sick leave and annual leave paid to an employee upon termination of employment may be used in the calculation of a retirement allowance only to the extent that they are used to replace, on a month for month basis, the normal compensation for a month or months included in the calculation of the final salary. A lump-sum payment may not be added to a single month's compensation.

(9) "Actuarial equivalent" means a benefit of equal value when computed on the basis of the actuarial tables in use by the system.

(10) "Account" means the Montana highway patrolmen's retirement account in the agency fund.

(11) "Involuntary retirement" means a retirement not for cause and before retirement age.

(12) "Member's annuity" means payments for life derived from contributions made by the contributor.

(13) "Optional retirement age" means the age at which a contributor may retire after 20 years' service.

(14) "Retirement age" means the age at which a member retires after 25 years of creditable service with the Montana highway patrol.

(15) "Retirement allowance" means the state annuity plus the member's annuity.

(16) "State annuity" means payments for life derived from contributions made by the state of Montana.

History: En. Sec. 1, Ch. 37, L. 1945; amd. Sec. 1, Ch. 243, L. 1955; amd. Sec. 201, Ch. 147, L. 1963; amd. Sec. 5, Ch. 326, L. 1974; amd. Sec. 1, Ch. 361, L. 1974; amd. Sec. 1, Ch. 65, L. 1977; amd. Sec. 1, Ch. 332, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 65 and once by Ch. 332. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

The 1963 amendment substituted the definition of "Account" for a paragraph reading, "Fund, the Montana highway patrolmen's retirement fund."

Chapter 326, Laws of 1974, inserted the numerical subdivision designations; inserted subdivision (2), defining "Department"; substituted "department" for "board" at the end of the definition of "Beneficiary" in subdivision (3); substituted "board of administration provided for in section 82A-210" for "Montana highway patrolman's retirement board" in the definition of "Board" in subdivi-

sion (5); and made minor changes in phraseology throughout the section.

Chapter 361, Laws of 1974, made no change in the text of the section.

Chapter 65, Laws of 1977, substituted "public employees' retirement division of the department of administration" in subdivision (2) for "department of administration provided for in Title 82A, chapter 2"; substituted "nominated to receive benefits under this chapter by a member's" in subdivision (3) for "or persons having an insurable interest in his life as he shall nominate by"; rewrote subdivision (9) which read "Actuarial equivalent" means the accumulated contributions and the present value of the member's state service based on length of service and member's attained age used to provide a life or temporary life income to the legally designated person, based on the person's attained age and sex at the time the option becomes available"; and made minor changes in phraseology, punctuation and style.

Chapter 332, Laws of 1977, made the same changes as Chapter 65; deleted "retirement" before "compensation" near the end of the first sentence in subdivision (8); and added the last two sentences in subdivision (8).

31-201.1. Retirement system. There is a retirement system known as the Montana highway patrolmen's retirement system, which is governed by the provisions of this chapter.

History: En. 31-201.1 by Sec. 2, Ch. 65, L. 1977.

Title of Act

An act to generally revise and clarify

the laws relating to highway patrol retirement and death and disability benefits; amending sections 31-201, 31-207, 31-208, 31-213, 31-215, 31-222, 31-223, and 31-228, R. C. M. 1947.

31-202, 31-203. Repealed.**Repeal**

Sections 31-202 and 31-203 (Secs. 2, 3, Ch. 37, L. 1945; Sec. 2, Ch. 243, L. 1955),

relating to highway patrolmen's retirement system and board, were repealed by Sec. 103, Ch. 326, Laws of 1974.

31-205. Payments into the Montana highway patrolmen's retirement account—investment. All appropriations made by the state, all contributions by members of the Montana highway patrol, in the amount hereinafter specified, and all interest on and increase of the investments and moneys under this account shall be paid to the state treasurer, who shall credit the payments to the Montana highway patrolmen's retirement account in the agency fund. When there is on deposit in the Montana highway patrolmen's retirement account a sum in excess of twenty-five thousand dollars (\$25,000), the excess will be invested by the board of investments as part of the long term investment fund and any of the account less than twenty-five thousand dollars (\$25,000) in amount shall be invested by the board of investments as part of the short term investment fund when so directed by the board.

History: En. Sec. 5, Ch. 37, L. 1945; amd. Sec. 1, Ch. 158, L. 1949; amd. Sec. 1, Ch. 176, L. 1953; amd. Sec. 202, Ch. 147, L. 1963; amd. Sec. 6, Ch. 326, L. 1974.

Amendments

The 1963 amendment substituted the references to the "Montana highway patrolmen's retirement account in the agency

fund" for references to the "Montana highway patrolmen's retirement fund."

The 1974 amendment substituted "board of investments" in the second sentence for "state board of land commissioners"; substituted "board" at the end of the section for "Montana highway patrolmen's retirement board"; and made minor changes in phraseology.

31-206. Rules—actuarial data—protection of funds. (1) The board is the trustee of all moneys collected for the retirement system. It may establish such rules as it considers necessary to carry out its functions under this act. The board shall determine the conditions under which persons may become members of and receive benefits under the retirement system. All persons in similar circumstances shall be treated alike. The board shall keep such data as shall be necessary for actuarial valuation purposes. It shall cause to be made periodic actuarial investigations into the mortality and service experience of the contributors to and the beneficiaries of the account, and shall adopt for the retirement system one or more mortality tables.

(2) The assets of the retirement system may not be used for or diverted to any purpose other than for the exclusive benefit of the members and their beneficiaries and for paying the reasonable expenses of administering the retirement system.

(3) Upon termination of the retirement system, termination of employment of a substantial number of members which would constitute a partial termination of the retirement system, or complete discontinuance of contributions to the retirement system, the retirement allowance accrued to each member directly affected by such occurrence becomes fully vested and nonforfeitable to the extent funded.

History: En. Sec. 6, Ch. 37, L. 1945; amd. Sec. 3, Ch. 243, L. 1955; amd. Sec. 203, Ch. 147, L. 1963; amd. Sec. 7, Ch. 326, L. 1974; amd. Sec. 2, Ch. 332, L. 1977.

Amendments

The 1963 amendment substituted "account" for "fund" in the last sentence.

The 1974 amendment substituted the present first sentence for a phrase reading "The board may establish such rules and regulations as it deems necessary, and is charged within the limitations of this act for its proper administration, operation, and enforcement"; and made minor changes in phraseology.

The 1977 amendment designated the former section as subsection (1); divided the former first sentence into the first and second sentences of subsection (1); added "is the trustee of all moneys collected for the retirement system" to the end of the first sentence of subsection (1); inserted the fourth sentence of subsection (1); added subsections (2) and (3); and made minor changes in phraseology.

31-207. Membership. All members of the Montana highway patrol, including the supervisor and assistant supervisors, must be members of the retirement system.

History: En. Sec. 7, Ch. 37, L. 1945; amd. Sec. 8, Ch. 326, L. 1974; amd. Sec. 3, Ch. 65, L. 1977.

Amendments

The 1974 amendment deleted "but excepting the present supervisor" after "assistant supervisors" in the first sentence; deleted from the end of the first sentence "established by this act on July 1, 1945, and thereafter when first becoming a member of the Montana highway patrol." and deleted a second sentence reading "Contributions by members under this act

shall commence with the first payroll after July 1, 1945"; and made minor changes in phraseology.

The 1977 amendment deleted a former second sentence reading "If a person becomes a member of the Montana highway patrol after July 1, 1945, who was at any time before July 1, 1945, a member of the Montana highway patrol, he shall receive credit for any such service prior to July 1, 1945, upon complying with the provisions of this act"; and made minor changes in phraseology.

31-208. Computation of the service of a contributor. In computing the length of service of a contributor for retirement purposes, full credit shall be given to each contributor for each year of service rendered to the patrol, including service rendered prior to July 1, 1945, if there is compliance with the provisions of this act. As soon as practicable, the board shall issue to each original member a certificate certifying the aggregate length of his service prior to July 1, 1945. The certificate will be final and conclusive as to his prior service unless thereafter modified by the board upon application of the contributor. The time during which a contributor is absent from service without pay may not be counted in computing his service for retirement purposes, except as provided in 31-223 in regard to service with the armed forces of the United States.

History: En. Sec. 8, Ch. 37, L. 1945; amd. Sec. 4, Ch. 243, L. 1955; amd. Sec. 4, Ch. 65, L. 1977.

Amendments

The 1977 amendment deleted "retirement" before "board" in the second sentence; substituted "may" for "shall" after "service without pay" in the fourth

sentence; substituted "his service for retirement purposes, except as provided in 31-223 in regard to service with the armed forces of the United States" for "the service of a contributor except service with the armed forces of the United States in time of war" at the end of the fourth sentence; and made minor changes in phraseology and punctuation.

31-209. Payments by contributors. Every member shall be required to contribute into the account a sum equal to six and one-half per cent (6½%) of his monthly salary, which sum shall be deducted from his salary and deposited to his credit in the account.

History: En. Sec. 9, Ch. 37, L. 1945; amd. Sec. 5, Ch. 243, L. 1955; amd. Sec. 204, Ch. 147, L. 1963; amd. Sec. 2, Ch. 361, L. 1974.

Amendments

The 1963 amendment substituted "deposited to his credit in the account" for "credited to his account in the fund"; and substituted "account" for "fund" in two other places.

The 1974 amendment increased the member's contribution from 5% to 6½% and deleted a proviso that the member's payments and contributions to his credit cease on serving 25 years in the highway patrol.

31-210. Contributions by the state of Montana. The state of Montana shall annually contribute to the account an amount equal to sixteen per cent (16%) of the salaries, paid to the highway patrolmen who are covered by this account, from the collection of the motor vehicle driver's license fee provided for under the laws of the state of Montana.

History: En. Sec. 10, Ch. 37, L. 1945; amd. Sec. 6, Ch. 243, L. 1955; amd. Sec. 205, Ch. 147, L. 1963; amd. Sec. 3, Ch. 361, L. 1974; amd. Sec. 1, Ch. 350, L. 1975.

Amendments

The 1963 amendment substituted "account" for "fund."

The 1974 amendment rewrote the section which formerly provided that the state would contribute annually 15% of all moneys received from the collection of the motor vehicle driver's license fee.

The 1975 amendment increased the contribution amount from 15% to 16%; added "from the collection of the motor vehicle driver's license fee provided for under the laws of the state of Montana"; and deleted a second sentence reading "This contribution shall be for the fiscal year beginning July 1, 1974, only, and a new rate shall be established by the 44th legislative assembly."

31-211. Retirement. A member in service who has completed at least twenty-five (25) years of creditable service may retire on a service retirement allowance upon written application to the department setting forth at what time, not less than thirty (30) days nor more than ninety (90) days subsequent to the filing thereof, he desires to be retired.

History: En. Sec. 11, Ch. 37, L. 1945; amd. Sec. 9, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted "department" in this section for "board"; and made a minor change in phraseology.

31-212. Repealed.**Repeal**

Section 31-212 (Sec. 12, Ch. 37, L. 1945; Sec. 7, Ch. 243, L. 1955), relating to

voluntary retirement after twenty years' service, was repealed by Sec. 7, Ch. 361, Laws of 1974.

31-213. Service retirement allowance. Upon retirement from service a member shall receive a service retirement allowance which shall consist of the state annuity plus the member's annuity. The service retirement allowance shall be computed as follows: 20 through 25 years, 2% of his final salary for each year of service; over 25 years, 2% of his final salary for each year of service through the 25th plus 1% of his final salary for each year of service past 25.

History: En. Sec. 13, Ch. 37, L. 1945; amd. Sec. 4, Ch. 361, L. 1974; amd. Sec. 5, Ch. 65, L. 1977.

Amendments

The 1974 amendment rewrote the second sentence which provided that the member's annuity consisted of the actuarial equivalent of his contributions at

retirement and the state annuity an amount which, when added thereto, provided a total of one-half the member's average final salary.

The 1977 amendment substituted "over 25 years" for "twenty-six (26) years and over" near the middle of the section; and made minor changes in style.

31-214. Disability retirement allowance.**Evidence of Disability**

State highway patrolman was not entitled to disability retirement allowance for total and permanent disability in light of evidence that claimant's condition did not prevent him from hunting, swimming and bowling and evidence of four medical

doctors that patrolman was not permanently disabled, notwithstanding evidence of osteopath that patrolman was totally and permanently disabled in so far as being highway patrolman. State ex rel. Spear v. State Highway Patrol Retirement Board, 149 M 7, 422 P 2d 348.

31-215. Involuntary retirement allowance. If a contributor is involuntarily discontinued from service after having completed 10 years of total service but before reaching retirement age, he shall, upon filing a written application with the department, be paid whichever of the following allowances that he elects:

(1) the full amount of his accumulated deductions; or

(2) a member's annuity of equivalent actuarial value to his accumulated deductions, plus an annuity which is the actuarial equivalent of the present value of the state annuity.

History: En. Sec. 15, Ch. 37, L. 1945; amd. Sec. 8, Ch. 243, L. 1955; amd. Sec. 6, Ch. 65, L. 1977.

Amendments

The 1977 amendment substituted "upon filing a written application with the department" for "upon filing of application

in the manner herein provided for retirement"; deleted "standing to his credit" after "accumulated deductions" in subdivision (1); deleted "then standing to his credit" from the end of subsection (2); and made minor changes in phraseology, punctuation and style.

31-220. Monthly payments of retirement allowances. The retirement allowances granted under the provisions of this act shall be paid in equal monthly installments and may not be increased, decreased, revoked or repealed unless by act of the legislature of the state of Montana. However, there may not be any duplication of benefits to a member or beneficiary due to there being more than one period of service of the member.

History: En. Sec. 20, Ch. 37, L. 1945; amd. Sec. 3, Ch. 332, L. 1977.

Amendments

The 1977 amendment added the last sentence; and made minor changes in phraseology.

31-221. Exemption from taxes and execution. Any money received or to be paid as a member's annuity, state annuity, or return of deductions or the right of any of these shall be exempt from any state or municipal tax and from levy, sale, garnishment, attachment, or any other process whatsoever and shall be unassignable except as specifically provided in 31-221.1.

History: En. Sec. 21, Ch. 37, L. 1945; amd. Sec. 3, Ch. 214, L. 1977.

Amendments

The 1977 amendment added the exception at the end of the section; and made minor changes in punctuation.

31-221.1. Withholding of group insurance premium from retirement benefit. A retiree who is a participant in an employee group insurance plan which permits participation in the group plan following retirement may elect to have the monthly premium for such group insurance withheld by the retirement system and paid directly by the system to the insurance carrier. In order to qualify for this withholding, a retiree must be a

participant in a group insurance plan available to the employees of his former employer. No withholding may be made for any retiree covered by an individual insurance policy.

History: En. 31-221.1 by Sec. 4, Ch. 214, L. 1977.

31-222. Nomination of beneficiary. Every contributor may name his beneficiary by written designation, duly acknowledged and filed with the department, and may change the beneficiary in like manner.

History: En. Sec. 22, Ch. 37, L. 1945; amd. Sec. 1, Ch. 107, L. 1967; amd. Sec. 10, Ch. 326, L. 1974; amd. Sec. 7, Ch. 65, L. 1977.

The 1977 amendment deleted a former second sentence reading "Such designation and all changes must be filed with the department"; and made minor changes in phraseology and punctuation.

Amendments

The 1967 amendment deleted from the end of this section "up until, but not after, the time of retirement."

The 1974 amendment substituted "department" in two places for "board"; and made a minor change in phraseology.

Effective Date

Section 2 of Ch. 107, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 21, 1967.

31-223. Military service. (1) (a) A member of the Montana highway patrol inducted into the armed forces of the United States has the option to:

(i) continue his payments into the fund; or

(ii) allow the department to make his payments for him during his military service, in which event he must repay the fund the full amount of the payments within 2 years after his return to the Montana highway patrol.

(b) If a member chooses one of the options in subsection (1)(a) and meets its requirements, he shall be given credit for his service in the armed forces of the United States as if it were service in the Montana highway patrol.

(2) A member with 15 years or more of service with the Montana highway patrol may at any time prior to his retirement make a written election with the department to qualify all or any portion of his active service in the armed forces of the United States for the purpose of calculating retirement benefits, up to a maximum of 5 years, if he is not otherwise eligible to receive credit for this same service pursuant to subsection (1). To qualify this service he must contribute to the account the amount determined by the department due based on his compensation and normal contribution rate as of his 16th year and as many succeeding years as are required to qualify this service, with interest from the date he becomes eligible for this benefit to the date he contributes. He may not qualify more of this service than he has service with the Montana highway patrol in excess of 15 years.

History: En. Sec. 23, Ch. 37, L. 1945; amd. Sec. 13, Ch. 243, L. 1955; amd. Sec. 11, Ch. 326, L. 1974; amd. Sec. 6, Ch. 361, L. 1974; amd. Sec. 8, Ch. 65, L. 1977.

"department" for "board" in clause (b) in subsection (1).

Chapter 361, Laws of 1974, inserted the subsection designation "(1)" at the beginning of the first paragraph and added subsection (2).

Amendments

Chapter 326, Laws of 1974, substituted

The 1977 amendment inserted the sub-

division (1)(a) designation; redesignated former subdivisions (1)(a) and (1)(b) as (1)(a)(i) and (1)(a)(ii); substituted "within 2 years after his return to the Montana highway patrol" for "upon his return to the Montana highway patrol, and these repayments must be made within two (2) years after his return to the

patrol, however, a member's service in the armed forces of the United States shall be credited to and made a part of the member's service allowance" at the end of subdivision (1)(a)(ii); added subdivision (1)(b); and made minor changes in phraseology, punctuation and style.

31-224. Fraud—correction of errors. (1) (a) No person shall knowingly make any false statement, or shall falsify or permit to be falsified any record of the retirement system in an attempt to defraud the system. (b) Should a change in records fraudulently made or a mistake in records inadvertently made result in a contributor or beneficiary receiving more or less than he would have been entitled to had the records been correct, then, on the discovery of the error, the department shall correct the error and shall adjust the payments which shall be made to the contributor or annuitant in a manner that the actuarial equivalent of the benefit to which he was correctly entitled shall be paid.

(2) A person violating any of the provisions of subsection (1) (a) of this section is guilty of a misdemeanor, and, upon conviction, shall be fined not exceeding one thousand dollars (\$1,000) or imprisoned not exceeding one (1) year, or both fined and imprisoned.

History: En. Sec. 24, Ch. 37, L. 1945; amd. Sec. 12, Ch. 326, L. 1974.

partment" in subsection (1)(b) for "board"; and made minor changes in phraseology.

Amendments

The 1974 amendment substituted "de-

31-228. Optional retirement allowance. (1) A member or a beneficiary may elect one of the optional retirement allowances set forth in subsection (2) at any time before the first payment on account of any retirement allowance is made. If a member dies after retirement and within 30 days from the date upon which his election or changed election was received by the department, the election is void and the death will be considered as that of a member before retirement.

(2) A member or a beneficiary may elect or prior to the approval of a previous election, revoke or change the previous election and elect to receive the actuarial equivalent of his retirement allowance as of the date of retirement in a lesser retirement allowance, payable throughout life with one of the following options:

(a) Option 1—upon his death, his lesser retirement allowance will be continued throughout the life of and paid to the person that he nominated by written designation, duly executed and filed with the department at the time of his retirement.

(b) Option 2—upon his death, one-half of his lesser retirement allowance will be continued throughout the life of and paid to the person that he nominated by written designation, duly executed and filed with the department at the time of his retirement.

(c) Option 3—such other benefits will be paid, either to the beneficiary or to any other person that he nominated, as, together with the lesser

retirement allowance, are the actuarial equivalent of his retirement allowance and have been approved by the board.

History: En. 31-228 by Sec. 14, Ch. 243, L. 1955; amd. Sec. 13, Ch. 326, L. 1974; amd. Sec. 9, Ch. 65, L. 1977.

Amendments

The 1974 amendment substituted "department" in the preliminary paragraph and in subdivisions (1) and (2) for "retirement board" and "board"; and made minor changes in style, punctuation and phraseology.

The 1977 amendment divided the former preliminary paragraph into subsections (1) and (2); inserted "A member or a beneficiary may elect one of the optional retirement allowances set forth in subsection (2) at any time before" at the beginning of subsection (1); redesignated former subdivisions (1) through (3) as subdivisions (2)(a) through (2)(c); deleted "having an insurable interest in his life" after "person" in subdivisions (2)(a) and (2)(b); and made minor changes in phraseology, punctuation and style.

tions (1) and (2); inserted "A member or a beneficiary may elect one of the optional retirement allowances set forth in subsection (2) at any time before" at the beginning of subsection (1); redesignated former subdivisions (1) through (3) as subdivisions (2)(a) through (2)(c); deleted "having an insurable interest in his life" after "person" in subdivisions (2)(a) and (2)(b); and made minor changes in phraseology, punctuation and style.

31-230. Dormant savings accounts—transfer—subsequent re-entry to membership. The department may, in its discretion, transfer the savings account of a member to the pension accumulation fund if the account has been dormant for a period of ten (10) years. However, no right of the member shall be jeopardized by the transfer, and the savings account shall be transferred to the member's name upon subsequent re-entry to membership.

History: En. Sec. 31-230 by Sec. 14, Ch. 243, L. 1955; amd. Sec. 14, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted "department" at the beginning of the section for "board"; and made minor changes in punctuation and phraseology.

31-231. Cost of living. (1) "Index" for the purposes of this section means, for any calendar year, that year's annual average consumer price index for urban wage earners and clerical workers, all items (1957-1959=100) compiled by the bureau of labor statistics, United States department of labor or successor agency.

(2) Effective July 1, 1974, every disability and survivorship retirement allowance then payable to a retired member or his beneficiary shall be increased by a percentage equal to one-half ($\frac{1}{2}$) of the percentage increase in the index for 1973 from the index for the calendar year preceding the effective date of the retirement of the member or the date preceding the date of the deceased member whichever is more.

(3) Effective July 1, 1974, every service retirement allowance granted after twenty (20) years of service to the patrol and payable on July 1, 1974, shall be increased by a percentage equal to one-half ($\frac{1}{2}$) of the percentage increase in the index for 1973 from the index for the calendar year preceding the effective date of retirement of the member.

(4) Retroactive to July 1, 1974, every survivorship retirement allowance then payable to the beneficiary of a contributor, not heretofore covered in (2), shall be increased by a percentage equal to one-half ($\frac{1}{2}$) of the percentage increase in the index for 1973 from the index for the calendar year preceding the effective date of the retirement of the member or the date preceding the date of the deceased member whichever provides the greater benefit.

(5) Retroactive to July 1, 1974, every service retirement allowance granted to a patrolman, who was compelled to retire because of "compulsory retirement age" (31-201 (6)) and did not qualify under (3) of this section, and payable on July 1, 1974, shall be increased by a percentage equal to one-half ($\frac{1}{2}$) of the percentage increase in the index for 1973 from the index for the calendar year preceding the effective date of retirement of the member.

(6) For the purposes of this section the minimum increase granted in subsections (2), (3), (4), and (5) above shall be the amount when added to the allowance payable on July 1, 1975, that shall total three hundred dollars (\$300) per month.

History: En. 31-321 by Sec. 6, Ch. 361, L. 1974; amd. Sec. 1, Ch. 349, L. 1975.

Title of Act

An act amending sections 31-201, 31-209, 31-210, 31-213, and 31-223, R. C. M. 1947, to modify the Montana highway patrolmen's retirement system; and repealing section 31-212, R. C. M. 1947.

Amendments

The 1975 amendment inserted subsections (4) and (5); redesignated former

subsection (4) as (6); added the references to subsections (4) and (5) in subsection (6); changed the date in subsection (6) from 1974 to 1975; increased the monthly total in subsection (6) from \$200 to \$300; and made minor changes in phraseology and punctuation.

Repealing Clause

Section 7 of Ch. 361, Laws 1974 read "Section 31-212, R. C. M. 1947, is repealed."

TITLE 32—HIGHWAYS, BRIDGES AND FERRIES

- Chapter 2. Road taxes and bonds, Repealed—Section 12-109, Chapter 197, Laws of 1965.
6. Special road districts, abolishment, Repealed—Section 12-109, Chapter 197, Laws of 1965.
 9. Corrugated iron culverts, Repealed—Section 12-109, Chapter 197, Laws of 1965.
 11. Speed and traffic regulations, 32-1123.1 to 32-1123.12, 32-1124 to 32-1126, 32-1127.1 to 32-1127.10, 32-1128, 32-1130, 32-1131.
 12. Uniform Accident Reporting Act, 32-1208, 32-1213.
 13. Good roads day, Repealed—Section 12-109, Chapter 197, Laws of 1965.
 15. Ferries, 32-1502.
 16. Department of highways—director—powers and duties, 32-1627, 32-1628, 32-1631.1, 32-1632 to 32-1641.
 17. National defense highway program, 32-1702, 32-1703.
 18. Stock lane law, Repealed—Section 12-109, Chapter 197, Laws of 1965.
 19. Montana toll bridge authority, Repealed—Section 12-109, Chapter 197, Laws of 1965.
 20. Controlled access highways, Repealed—Section 12-109, Chapter 197, Laws of 1965.
 21. Uniform act regulating traffic on highways, 32-2102, 32-2119, 32-2124.3 to 32-2124.5, 32-2128, 32-2133, 32-2134, 32-2134.1 to 32-2134.3, 32-2137, 32-2142 to 32-2142.3, 32-2143 to 32-2143.4, 32-2144, 32-2144.1 to 32-2144.7, 32-2145 to 32-2149, 32-2150.3, 32-2157, 32-2158, 32-2163, 32-2170, 32-2173 to 32-2175, 32-2177, 32-2188, 32-2190, 32-2192, 32-2193, 32-2195, 32-2197, 32-2198, 32-21-102, 32-21-105, 32-21-105.1, 32-21-112.1, 32-21-113, 32-21-122, 32-21-130, 32-21-132, 32-21-143.1 to 32-21-143.4, 32-21-149, 32-21-149.1, 32-21-150.1 to 32-21-150.3, 32-21-151, 32-21-155.1, 32-21-163, 32-21-164, 32-21-166 to 32-21-180.
 22. Highway code—general provisions, 32-2201 to 32-2203.
 23. Classification of highways, 32-2301, 32-2302.
 24. Assent to federal aid—highway commission—department of highways—powers and duties, 32-2401, 32-2402, 32-2404, 32-2406 to 32-2416, 32-2419 to 32-2429.
 25. State highways engineer and other employees, 32-2504 to 32-2505.3.
 26. Distribution and apportionment of highway construction funds, 32-2601, 32-2603 to 32-2627.
 27. Montana toll bridge authority, Repealed—Section 209, Chapter 316, Laws of 1974.
 28. Board of county commissioners responsibility for county roads, 32-2801 to 32-2803, 32-2805 to 32-2820.
 29. Board of county commissioners responsibility for bridges and ferries, 32-2901 to 32-2907.
 30. County road superintendent, 32-3001 to 32-3007.
 31. Local improvement districts, 32-3101 to 32-3131.
 32. State vehicle fees—payment, expiration and disposition, 32-3201 to 32-3206.
 33. Additional truck, trailer and bus fees—sales tax on vehicles—excess weight penalties, 32-3301 to 32-3310, 32-3312 to 32-3320.
 34. Fees for drive-away or tow-away transporters, 32-3401 to 32-3408.
 35. Bond issues for state toll bridges, Repealed—Section 209, Chapter 316, Laws of 1974.
 36. County tax levies for road and bridge construction, 32-3601 to 32-3605.
 37. Local use of registration and other vehicle fees, 32-3701 to 32-3703, 32-3706.
 38. County road and bridge bonds, 32-3801 to 32-3806.
 39. Acquisition and disposition of property by state, 32-3901 to 32-3918, 32-3920, 32-3923 to 32-3931.
 40. Acquisition and disposition of property by county, 32-4001 to 32-4018.
 41. Contracts of state highway commission, 32-4101 to 32-4103.

42. Contracts of counties and local improvement districts, 32-4201 to 32-4207.
43. Control of access, 32-4301 to 32-4303, 32-4305 to 32-4311.
44. Good Roads day—obstructions, encroachments and debris on highways, 32-4401, 32-4403 to 32-4414.
45. Junkyards along roads, 32-4513 to 32-4523.
46. Traffic safety program, 32-4601, 32-4602, 32-4605 to 32-4607.
47. Outdoor advertising along highways, 32-4715 to 32-4728.
48. Excavations in public streets, 32-4801 to 32-4808.

CHAPTER 1—HIGHWAYS—DEFINITIONS AND CLASSIFICATIONS

32-101. (1610) Repealed.

Repeal

Section 32-101 (Sec. 1, Ch. 72, L. 1913; Sec. 1, Ch. 141, L. 1915; Sec. 1, Ch. 172,

L. 1917), relating to title of act, was repealed by Sec. 209, Ch. 316, Laws of 1974.

32-102 to 32-107. (1611 to 1616) Repealed.

Repeal

These sections (Sec. 10, p. 106, L. 1874; Sec. 2600, Pol. C. 1895; Secs. 1, 3, 6, Ch. 44, L. 1903; Secs. 2 to 7, Ch. 72, L. 1913; Secs. 2 to 7, Ch. 141, L. 1915; Secs. 2 to 7, Ch. 172, L. 1917; Sec. 1, Ch. 247, L. 1959),

relating to definitions and classifications of highways, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see secs. 32-2203, 32-2301, 32-2808, and 32-4014.

CHAPTER 2—ROAD TAXES AND BONDS

(Repealed—Section 12-109, Chapter 197, Laws of 1965, effective December 31, 1966)

32-201 to 32-208. (1617 to 1620) Repealed.

Repeal

These sections (Sec. 19, p. 110, L. 1874; Sec. 1, p. 119, L. 1885; Secs. 1796, 1837, 1838, 5th Div. Comp. Stat. 1887; Secs. 1, 3, p. 176, L. 1897; Sec. 1, p. 69, L. 1899; Secs. 11, 26, 27, Ch. 44, L. 1903; Secs. 1 to 4, Ch. 2, Ch. 72, L. 1913; Secs. 1 to 4, Ch. 2, Ch. 141, L. 1915; Secs. 1 to 4, Ch. 2, Ch.

172, L. 1917; Sec. 1, Ch. 2, L. 1933; Secs. 1 to 4, Ch. 69, L. 1945; Sec. 1, Ch. 145, L. 1947; Sec. 1, Ch. 149, L. 1947), relating to road taxes and bonds, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see secs. 32-3601 to 32-3605 and 32-3801.

CHAPTER 3—SUPERVISION OF PUBLIC HIGHWAYS

32-301. (1621) Repealed.

Repeal

Section 32-301 (Sec. 1, Ch. 3, Ch. 141, L. 1915; Sec. 1, Ch. 3, Ch. 172, L. 1917),

relating to highway proceedings being included in minutes of board, was repealed by Sec. 209, Ch. 316, Laws of 1974.

32-302 to 32-314. (1622 to 1632) Repealed.

Repeal

These sections (Sec. 12, p. 119, L. 1873; Sec. 24, p. 113, L. 1874; Sec. 4, p. 118, L. 1885; Secs. 1801, 1802, 1805, 1834, 5th Div. Comp. Stat. 1887; Secs. 2632, 2695, 2700, 2701, 2710, 2711, 2720, 2740, 2741, Pol. C. 1895; Secs. 10, 33 to 36, 51, 52, Ch. 44, L. 1903; Secs. 1, 2, Ch. 76, L. 1905; Secs. 2 to 13, Ch. 3, Ch. 72, L. 1913; Secs. 2 to 13, Ch. 3, Ch. 141, L. 1915; Sec. 1, Ch. 106, L. 1917; Secs. 2 to 12, Ch. 3, Ch. 172, L. 1917; Secs. 1 to 4, Ch. 15, Ex. L. 1919; Sec. 1, Ch. 128, L. 1925;

Secs. 1, 2, Ch. 102, L. 1927; Secs. 1, 2, Ch. 21, L. 1929; Sec. 1, Ch. 59, L. 1929; Sec. 1, Ch. 81, L. 1929; Sec. 1, Ch. 176, L. 1929; Sec. 1, Ch. 179, L. 1931; Sec. 1, Ch. 102, L. 1947; Sec. 1, Ch. 84, L. 1953; Sec. 1, Ch. 109, L. 1955; Sec. 1, Ch. 116, L. 1957; Sec. 1, Ch. 128, L. 1959; Sec. 2, Ch. 260, L. 1965), relating to the functions of the county commissioners, county surveyors, and road supervisors with respect to roads, were repealed by Sec. 12-109, Ch. 197, Laws 1965. For new law, see secs. 32-2801 to 32-3007.

32-315. (1633) Repealed.**Repeal**

Section 32-315 (Sec. 5, Ch. 15, Ex. L. 1919), relating to declaration of law as

emergency measure, was repealed by Sec. 209, Ch. 316, Laws of 1974.

32-316. (1634) Repealed.**Repeal**

This section (Sec. 2742, Pol. C. 1895; Sec. 53, Ch. 44, L. 1903; Sec. 3, Ch. 76, L. 1905; Sec. 14, Ch. 3, Ch. 72, L. 1913; Sec. 14, Ch. 3, Ch. 141, L. 1915; Sec. 13,

Ch. 3, Ch. 172, L. 1917), relating to records of county commissioners relating to roads, was repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sec. 32-2805.

32-317 to 32-321. [Transferred.]**Compiler's Notes**

Sections 2 to 4, Ch. 316, Laws of 1974

renumbered these sections as secs. 32-2816 to 32-2820.

CHAPTER 4—ESTABLISHING, ALTERING AND VACATING PUBLIC HIGHWAYS

32-401 to 32-413. (1635 to 1647) Repealed.**Repeal**

These sections (Secs. 2750, 2751, 2760 to 2763, 2765 to 2768, Pol. C. 1895; Secs. 55, 56, 65 to 68, 70, 72, 73, pages 35, 38, 39, L. 1901; Secs. 54, 55, 63 to 66, 68 to 71, Ch. 44, L. 1903; Secs. 1 to 16, Ch. 4, Ch. 72, L. 1913; Secs. 1 to 16, Ch. 4, Ch. 141, L. 1915; Secs. 1 to 13, Ch. 4, Ch. 172,

L. 1917; Secs. 1, 2, Ch. 4, Ex. L. 1919; Sec. 1, Ch. 107, L. 1935; Sec. 1, Ch. 123, L. 1961), relating to the establishment, alteration and discontinuance of highways, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see secs. 32-4002 to 32-4013.

32-414. (1648) Repealed.**Repeal**

Section 32-414 (Sec. 2769, Pol. C. 1895; Sec. 74, p. 39, L. 1901; Sec. 72, Ch. 44, L. 1903; Sec. 17, Ch. 4, Ch. 72, L. 1913;

Sec. 17, Ch. 4, Ch. 141, L. 1915; Sec. 14, Ch. 4, Ch. 172, L. 1917), relating to removal of fences, was repealed by Sec. 209, Ch. 316, Laws of 1974.

32-415, 32-416. (1649, 1650) Repealed.**Repeal**

These sections (Secs. 2770, 2771, Pol. C. 1895; Secs. 75, 76, p. 40, L. 1901; Secs. 73, 74, Ch. 44, L. 1903; Secs. 18, 19, Ch. 4, Ch. 72, L. 1913; Secs. 18, 19, Ch. 4, Ch. 141, L. 1915; Secs. 15, 16, Ch. 4, Ch. 172,

L. 1917), relating to the laying out and changing of highways along section or subdivision lines, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sec. 32-4009.

32-417. (1651) Repealed.**Repeal**

Section 32-417 (Sec. 20, Ch. 4, Ch. 72, L. 1913; Sec. 20, Ch. 4, Ch. 141, L. 1915; Sec. 17, Ch. 4, Ch. 172, L. 1917), relating

to defects as not invalidating proceedings, was repealed by Sec. 209, Ch. 316, Laws of 1974.

CHAPTER 5—LOCAL IMPROVEMENT DISTRICTS

32-501 to 32-507. (1676 to 1682) Repealed.**Repeal**

These sections (Secs. 1 to 7, Ch. 12, Ch. 172, L. 1917), relating to construction and improvement of highways through assess-

ment districts, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see secs. 32-3101 to 32-3107 and 32-3110.

32-508. (1683) Repealed.**Repeal**

Section 32-508 (Sec. 8, Ch. 12, Ch. 172, L. 1917), relating to determination of

amount of damages by condemnation proceedings, was repealed by Sec. 209, Ch. 316, Laws of 1974.

32-509 to 32-526. (1684 to 1701) Repealed.**Repeal**

These sections (Secs. 9 to 26, Ch. 12, Ch. 172, L. 1917; Sec. 1, Ch. 13, L. 1925), relating to construction and improvement of highways through local improvement

districts, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see secs. 32-3108 to 32-3131.

32-527. (1702) Repealed.**Repeal**

Section 32-527 (Sec. 27, Ch. 12, Ch. 172, L. 1917), relating to construction of

chapter, was repealed by Sec. 209, Ch. 316, Laws of 1974.

CHAPTER 6—SPECIAL ROAD DISTRICTS, ABOLISHMENT

(Repealed—Section 12-109, Chapter 197, Laws of 1965, effective December 31, 1966)

32-601, 32-602. Repealed.**Repeal**

These sections (Secs. 1, 3, Ch. 35, L. 1939), abolishing special road districts,

were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

CHAPTER 7—PUBLIC BRIDGES**32-701 to 32-711. (1703 to 1713) Repealed.****Repeal**

These sections (Secs. 2810 to 2814, Pol. C. 1895; Secs. 75 to 79, Ch. 44, L. 1903; Sec. 1, Ch. 9, L. 1909; Secs. 1 to 5, Ch. 5, Ch. 72, L. 1913; Secs. 1 to 5, Ch. 5, Ch. 141, L. 1915; Secs. 1 to 6, Ch. 63, L. 1917; Sec. 1, Ch. 144, L. 1931; Sec. 1,

Ch. 144, L. 1947; Sec. 1, Ch. 25, L. 1951; Sec. 1, Ch. 172, L. 1963), relating to the construction and maintenance of public bridges, were repealed by Sec. 12-109, Ch. 197, Laws 1965. For new law, see secs. 32-2901 to 32-2907 and 32-3602 to 32-3604.

32-712. (1714) Repealed.**Repeal**

Section 32-712 (Sec. 7, Ch. 63, L. 1917), relating to construction of act with re-

spect to cities and towns, was repealed by Sec. 209, Ch. 316, Laws of 1974.

32-713 to 32-715. Repealed.**Repeal**

These sections (Secs. 1 to 3, Ch. 106, L. 1955; Secs. 1, 2, Ch. 35, L. 1957), relating to state construction and reconstruction

of bridges, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sec. 32-2604.

32-716. Repealed.**Repeal**

Section 32-716 (Sec. 4, Ch. 106, L. 1955; Sec. 3, Ch. 35, L. 1957), relating to deduction of allotment from future reg-

ular apportionments to the particular financial district, was repealed by Sec. 209, Ch. 316, Laws of 1974.

CHAPTER 9—CORRUGATED IRON CULVERTS

(Repealed—Section 12-109, Chapter 197, Laws of 1965, effective December 31, 1966)

32-901 to 32-905. (1721 to 1725) Repealed.

Repeal

These sections (Secs. 1 to 5, Ch. 143, L. 1919), relating to corrugated iron cul-

verts used in road construction, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

CHAPTER 10—OBSTRUCTIONS AND ENCROACHMENTS

32-1001. (1726) Repealed.

Repeal

Section 32-1001 (Sec. 2621, Pol. C. 1895; Sec. 7, Ch. 44, L. 1903; Sec. 1, Ch. 6, Ch. 72, L. 1913; Sec. 1, Ch. 6, Ch. 141,

L. 1915), relating to construction of and damage to sidewalks, was repealed by Sec. 209, Ch. 316, Laws of 1974.

32-1002 to 32-1017. (1727 to 1741.1) Repealed.

Repeal

These sections (Sec. 2734, Pol. C. 1895; Secs. 50, 90, Ch. 44, L. 1903; Secs. 14 to 16, Ch. 6, Ch. 72, L. 1913; Secs. 2 to 16, Ch. 6, Ch. 141, L. 1915; Sec. 1, Ch. 74, L. 1929; Sec. 1, Ch. 237, L. 1959; Sec. 1,

Ch. 176, L. 1965), relating to encroachments and obstructions on highways, were repealed by Sec. 158, Ch. 263, Laws 1955; Sec. 12-109, Ch. 197, Laws 1965. For new law, see secs. 32-21-111, 32-4403 to 32-4410.

32-1018 to 32-1022. [Transferred.]

Compiler's Notes

Sections 7 to 11, Ch. 316, Laws of 1974

renumbered these sections as secs. 32-21-176 to 32-21-180.

CHAPTER 11—SPEED AND TRAFFIC REGULATIONS

Section 32-1123.1.	Standards of maximum dimensions, weights, etc.
32-1123.2.	Definitions.
32-1123.3.	Width.
32-1123.4.	Height.
32-1123.5.	Length.
32-1123.6.	Permissible loads.
32-1123.7.	Special permits.
32-1123.8.	Measuring distance between axles.
32-1123.9.	Reduction under special circumstances.
32-1123.10.	Operation without special permits.
32-1123.11.	Federal law.
32-1123.12.	Authority of local authorities.
32-1124.	Violation a misdemeanor.
32-1125.	Penalties.
32-1126.	Officers may weigh vehicles and require removal of excessive loads—badges and uniforms of highway employees.
32-1127.1.	Permits for excess size and weight.
32-1127.2.	Special permits—discretion of issuer—conditions.
32-1127.3.	Special permits—fees.
32-1127.4.	Self-propelled vehicles.
32-1127.5.	Other fees—exemption.
32-1127.6.	Permits issued to governmental entities.
32-1127.7.	Special permits—misrepresentations and violations.
32-1127.8.	Display of permit.
32-1127.9.	Confiscation—action by commission.
32-1127.10.	Deposit of fees.

- 32-1128. When state or local road authorities may restrict right to use highways.
 32-1130. Penalties for misdemeanor.
 32-1131. Speed and traffic regulations—disposition of fines.

32-1112. (1748) Liability of owner for negligence of driver.

Collision with Demonstrator

The mere fact that a demonstrator auto driven by a salesman is of advertising benefit to the dealer, is not enough to

make the dealer liable for the fault of the salesman who drives it. State ex rel. City Motor Co. v. District Court, — M —, 530 P 2d 486.

32-1113 to 32-1115. (1748.1 to 1748.3) Repealed.

Repeal

Sections 32-1113 to 32-1115 (Secs. 1 to 3, Ch. 195, L. 1931), relating to the liabil-

ity of vehicle owners or operators for injuries to guest-passengers, were repealed by Sec. 1, Ch. 236, Laws of 1975.

32-1116. (1748.4) Act not applicable to common carriers, etc.

Compiler's Notes

"This act" in this section apparently refers to this section and repealed sec-

tions 32-1113 to 32-1115. See repeal note, above.

32-1117, 32-1118. (1748.5, 1748.6) Repealed.

Repeal

Sections 32-1117 and 32-1118 (Secs. 1, 2, Ch. 101, L. 1923), relating to size of

sleigh runners and penalty for violating act, were repealed by Sec. 209, Ch. 316, Laws of 1974.

32-1120 to 32-1123. (1750 to 1751.1) Repealed.

Repeal

Sections 32-1120 to 32-1123 (Secs. 88, 89, Ch. 44, L. 1903; Secs. 7, 8, Ch. 8, Ch. 72, L. 1913; Secs. 7, 8, Ch. 8, Ch. 141, L. 1915; Sec. 1, Ch. 171, L. 1931; Secs. 1, 2, Ch. 123, L. 1947; Sec. 1, Ch. 73, L. 1953; Sec. 1, Ch. 250, L. 1955; Sec. 1,

Ch. 221, L. 1959; Sec. 7, Ch. 243, L. 1961; Sec. 1, Ch. 2, Ex. L. 1967; Sec. 1, Ch. 188, L. 1969; Sec. 1, Ch. 462, L. 1973), relating to regulation of size and weight of vehicles on public highways, were repealed by Sec. 209, Ch. 316, Laws of 1974.

32-1123.1. Standards of maximum dimensions, weights, etc. The standards provided for in sections 32-1123.2 through 32-1123.11 govern the maximum dimensions, weights, and other characteristics of motor vehicles operating over the highways in the state to the exclusion of other standards or other requirements respecting the subject matter.

History: En. 32-1123.1 by Sec. 12, Ch. 316, L. 1974.

Title of Act

An act for the codification and general revision of the laws relating to the department of highways.

32-1123.2. Definitions. In sections 32-1123.1 through 32-1123.11, the following definitions apply:

- (1) Vehicle—as defined in section 32-2102.
- (2) Motor vehicle—as defined in section 32-2102.
- (3) Truck-tractor—as defined in section 32-2103.
- (4) Truck—as defined in section 32-2104.
- (5) Trailer—as defined in section 32-2105.
- (6) Semitrailer—as defined in section 32-2105.
- (7) Dolly or converter gear—a device consisting of one or two axles with a fifth wheel and trailer tongue used to support the forward end of a semitrailer, thereby converting a semitrailer into a trailer.

(8) Axle—a transverse beam which is the common axis of rotation of one or more wheels and which, to receive credit for allowable total gross loading, must be capable of continuously transmitting a proportionate share of the total gross load to the roadway when the axle is in operation.

History: En. 32-1123.2 by Sec. 13, Ch. 316, L. 1974; amd. Sec. 1, Ch. 269, L. 1977.

Amendments

The 1977 amendment added subdivision (8); and made minor changes in style.

32-1123.3. Width. A vehicle, unladen or with load, may not have a total outside width in excess of one hundred two (102) inches, except buses which may have a total outside width not to exceed one hundred two (102) inches. This bus width is allowed only on paved highways twenty (20) feet or more in width. This restriction does not apply to an implement of husbandry or a vehicle used for hauling hay moved or propelled upon the highway during daylight hours for a distance of not more than one hundred (100) miles, if the movement is incidental to the farming operations of the owner of the implement of husbandry or the vehicle used for hauling hay. If the implement of husbandry or the vehicle used for hauling hay has a width in excess of twelve (12) feet, it shall be preceded by flagmen escorts for the purpose of warning other highway users; provided, however, that this restriction does not apply to dual wheel tractors under fifteen (15) feet overall width which are used in farming operations. The rear of such an implement of husbandry or vehicle used for hauling hay shall properly display lights which meet standard requirements in section 32-21-134, R. C. M. 1947. However, if the highway passes through a hazardous area, such implements of husbandry or vehicles used for hauling hay must be preceded and followed by flagmen escorts.

History: En. 32-1123.3 by Sec. 14, Ch. 316, L. 1974; amd. Sec. 1, Ch. 314, L. 1975.

Amendments

The 1975 amendment inserted references to vehicles used for hauling hay after "implement of husbandry" throughout the section.

32-1123.4. Height. A vehicle, unladen or with load, may not exceed a height of thirteen (13) feet, six (6) inches.

History: En. 32-1123.4 by Sec. 15, Ch. 316, L. 1974.

32-1123.5. Length. (1) A single truck or any self-propelled vehicle, unladen or with load, may not have an overall length, inclusive of front and rear bumpers, in excess of forty (40) feet.

(2) A single bus, unladen or with load, may not have an overall length, inclusive of front and rear bumpers, in excess of forty (40) feet.

(3) A combination of truck and trailer, tractor and semitrailer, tractor-semitrailer-full trailer, or tractor-semitrailer-semitrailer converted to a trailer by use of a dolly equipped with a fifth wheel, may not have an overall length, inclusive of front and rear bumpers, in excess of sixty (60) feet. If the combination consists of more than two (2) units, the rear units of the combination shall be equipped with breakaway brakes.

(4) A motor vehicle may not tow more than one (1) motor vehicle, and a motor vehicle may not draw more than two (2) motor vehicles

attached to it by the dual saddle-mount method, that is by mounting the front wheels of one (1) vehicle on the bed of another, leaving only the rear wheels of the vehicle in contact with the roadway, nor may this combination have an overall length, inclusive of front and rear bumpers, in excess of sixty (60) feet.

(5) A passenger vehicle or truck of less than two thousand (2,000) pounds "manufacturers' rated capacity" may not tow more than one (1) trailer or semitrailer, nor may this combination have an overall length, inclusive of front and rear bumpers, in excess of sixty (60) feet.

History: En. 32-1123.5 by Sec. 16, Ch. 316, L. 1974; amd. Sec. 1, Ch. 20, L. 1975.

Amendments
The 1975 amendment inserted "or any self-propelled vehicle" in subsection (1); and increased the maximum length from 35 feet to 40 feet.

32-1123.6. Permissible loads. (1) An axle may not carry a load in excess of eighteen thousand (18,000) pounds. An axle load is defined as the total load transmitted to the road by all wheels whose centers are included between two (2) parallel transverse vertical planes forty (40) inches apart, extending across the full width of the vehicle.

(2) (a) The gross weight of a group of axles of a vehicle or combination of vehicles, if the distance between first and last axles of a group of axles is eighteen (18) feet or less, and the gross weight of a vehicle if the distance between the first and last axles of all the axles of the vehicle is eighteen (18) feet or less, may not exceed that set forth in the following table of weights:

DISTANCE IN FEET BETWEEN THE FIRST AND LAST AXLES OF ANY GROUP OF AXLES OF ANY VEHICLE OR COMBINATION OF VEHICLES OR BETWEEN THE FIRST AND LAST AXLES OF ALL OF THE AXLES OF ANY VEHICLE.	MAXIMUM GROSS WEIGHT, IN POUNDS, OF ANY GROUP OF AXLES, OF ANY VEHICLE OR COMBINATION OF VEHICLES, OR OF ANY VEHICLE.
4	32,000
5	32,000
6	32,200
7	32,900
8	33,600
9	34,300
10	35,000
11	35,700
12	36,400
13	37,100
14	43,200
15	44,000
16	44,800
17	45,600
18	46,400

(b) The gross weight of a vehicle or combination of vehicles, if the distance between the first and last axles of the vehicle or combination

of vehicles is more than eighteen (18) feet, may not exceed that set forth in the following table of weights:

DISTANCE IN FEET BETWEEN THE FIRST AND LAST AXLES OF ALL THE AXLES OF A VEHICLE OR COMBINA- TION OF VEHICLES.	MAXIMUM GROSS WEIGHT, IN POUNDS, OF ANY VEHICLE OR COMBINATION OF VEHICLES.
18	46,400
19	47,200
20	48,000
21	48,800
22	49,600
23	50,400
24	51,200
25	55,250
26	56,100
27	56,950
28	57,800
29	58,650
30	59,500
31	60,350
32	61,200
33	62,050
34	62,900
35	63,750
36	64,600
37	65,450
38	66,300
39	68,000
40	70,000
41	72,000
42	73,280
43	73,280
44	73,280
45	73,280
46	73,280
47	73,280
48	73,280
49	73,280
50	73,280
51	73,280
52	73,600
53	74,400
54	75,200
55	76,000
56	76,400
57	76,800

History: En. 32-1123.6 by Sec. 17, Ch.
316, L. 1974.

DECISIONS UNDER FORMER LAW

Mandatory Nature of Penalty

Once court determined that defendant was driving logging truck upon highways of state when gross weight exceeded maximum gross weight allowed by statute by some 28,000 pounds, court had no choice but to levy additional fine of \$1,000 under penalty section of chapter; penalty is in addition to the other penalties provided

by statute, is obligatory upon judge, is not violation of double jeopardy provision of constitution and does not violate statute providing that when action is punishable under different provisions of code, punishment may be had under only one of them. State ex rel. Oleson v. District Court, Eleventh Judicial Dist., 151 M 12, 438 P 2d 560.

32-1123.7. Special permits. The department of highways may, based on evaluation of safety, highway capacity, and economics of highway maintenance and vehicle operation, authorize by special permit at a fee of ten dollars (\$10), specifying highway routings, the operation of a vehicle having two (2) but not more than nine (9) axles if the maximum single axle load is twenty thousand (20,000) pounds and if no two (2) consecutive axles more than forty (40) inches or less than ninety-six (96) inches apart carry a load in excess of thirty-four thousand (34,000) pounds. For purposes of this section, axles forty (40) inches or less apart are considered as a single axle. The maximum gross weight allowed on a vehicle or combination so authorized by this special permit shall be determined by the formula $W \text{ equals } 500 (LN/N \text{ minus } 1 \text{ plus } 12N \text{ plus } 36)$ in which W equals gross weight, L equals wheel base in feet, and N equals number of axles. However, the maximum allowable gross weight on a group of axles may not exceed the following values:

2 axles	40,000 pounds
3 axles	60,000 pounds
4 axles	80,000 pounds
5 axles	85,500 pounds
6 axles	90,000 pounds
7 axles	105,500 pounds
8 axles	105,500 pounds
9 axles	105,500 pounds

This section does not apply to highways which are a part of the national system of interstate and defense highways (as referred to in section 127 of Title 23, United States Code) when application of this section would prevent this state from receiving federal funds for highway purposes.

History: En. 32-1123.7 by Sec. 18, Ch. 316, L. 1974.

32-1123.8. Measuring distance between axles. The distance between axles shall be measured to the nearest foot. When a fractional measurement is exactly one-half ($\frac{1}{2}$) foot, the next larger whole number shall be used.

History: En. 32-1123.8 by Sec. 19, Ch. 316, L. 1974.

32-1123.9. Reduction under special circumstances. The maximum axle and axle group loads stated in section 32-1123.6 are subject to rea-

sonable reduction in the discretion of the department during periods when road subgrades have been weakened by water saturation or other causes.

History: En. 32-1123.9 by Sec. 20, Ch. 316, L. 1974.

32-1123.10. Operation without special permits. The operation of vehicles or combinations of vehicles having dimensions or weights in excess of the maximum limits specified in sections 32-1123.1 through 32-1123.9 is permitted only if authorized by special permit issued by the department of highways or its agents, or the highway patrol.

History: En. 32-1123.10 by Sec. 21, Ch. 316, L. 1974.

Special Permit Valid Under Federal Aid Highway Act

The Montana state highway commission on July 1, 1956 had the authority under section 32-1123 to issue special permits for overweight vehicles. Since this statute has been re-enacted into law each

time other provisions of the section were changed, continuous authority has been provided for the issuance of the special permits, and the state highway commission has the present power to issue permits without jeopardizing the right of the state of Montana to receive federal funds for highway purposes. State ex rel. Dick Irvin, Inc. v. Anderson, — M —, 525 P 2d 564.

32-1123.11. Federal law. Sections 32-1123.1 through 32-1123.10 do not authorize, without a permit issued as provided by law, the operation of a combination of vehicles having a gross weight, axle load or size in excess of that authorized in those sections, or the operation of a combination of vehicles on the national system of interstate and defense highways having a gross weight or size in excess of that permitted by law in this state before July 1, 1956, or by federal law or regulation in excess thereof, which is adopted. If federal law allows establishment of size and weight limits in excess of those permitted in those sections, without penalty or denial of federal funds for highway purposes, the department of highways may, by permit designating highway routing, authorize the movement on highways under its jurisdiction of vehicles or combinations of vehicles of a size or weight in excess of the limits provided for in those sections, but within the limits necessary to qualify for federal aid highway funds.

History: En. 32-1123.11 by Sec. 22, Ch. 316, L. 1974.

32-1123.12. Authority of local authorities. A local authority may not alter the limitations provided in sections 32-1123.1 through 32-1123.11, or substitute other limitations or requirements, except as provided in section 32-1128.

History: En. 32-1123.12 by Sec. 23, Ch. 316, L. 1974.

32-1124. Violation a misdemeanor. (1) It is a misdemeanor for a person, firm, or corporation to violate any provision of 32-1123.1 through 32-1123.11.

(2) However, the operator of a vehicle or combination of vehicles may move over the highways to the first open state scale, permanent or portable, without incurring the excess weight penalties set forth in

32-1125 if the total gross weight of the vehicle or combination of vehicles does not exceed allowable weight limitations by more than 7%. In the event the vehicle or combination of vehicles is not in excess of the allowable weight limitations by more than 7%, the department may issue a single trip permit for the fee of \$10 for allowing said vehicle or combination of vehicles to move over the highways to the first facility where its load can be safely adjusted or to its destination. Violations in excess of 7% are subject to the fines provided in 32-1125, and all loads in excess of 7% must be adjusted or reduced to conform to the size and weight limitations before the vehicle or combination of vehicles is moved from the point of weighing.

History: En. Sec. 3(a), Ch. 123, L. 1947; amd. Sec. 2, Ch. 243, L. 1961; amd. Sec. 24, Ch. 316, L. 1974; amd. Sec. 1, Ch. 239, L. 1977.

Amendments

The 1974 amendment substituted "any provision of sections 32-1123.1 through 32-1123.11" in subsection (1) for "any of the provisions of section 32-1123"; added subsection (2); and made minor changes in phraseology, punctuation and style.

The 1977 amendment substituted subsection (2) for "However, the operator of a vehicle which is loaded at a location where no scale exists may move the vehicle over the highways to the first open state scale without violating those

sections and incurring the penalties provided by section 32-1125. The origin of movement shall be at such a distance from a scale that the operator could not have been reasonably expected to check the weight of the vehicle during the loading. The operator shall exhibit shipping papers or other written evidence of the location at which the vehicle was loaded. The operator shall move the vehicle toward its destination over the most direct highway route and stop at the first open state scale, permanent or portable. The load must be adjusted or reduced to conform to the size and weight limitations of the vehicle before the vehicle is moved from the point of weighing"; and made a minor change in style.

32-1125. Penalties. (1) A person, firm or corporation convicted of violating sections 32-1123.1 through 32-1123.11 shall be punished by a fine of not less than fifteen dollars (\$15) nor more than fifty dollars (\$50), or by imprisonment in the county or municipal jail for not less than five (5) days nor more than twenty-five (25) days. In addition, a person, firm or corporation convicted of operating a motor vehicle upon the public highways of this state with weight upon a wheel, axle or group of axles or upon more than one (1) of them greater than the maximum permitted by sections 32-1123.1 through 32-1123.11, shall be fined, in addition to other penalties provided by law for the offense, the following amounts:

(a) Fifteen dollars (\$15) for any excess weight up to and including two thousand (2,000) pounds.

(b) Twenty-five dollars (\$25) for any excess weight more than two thousand (2,000) pounds and less than four thousand and one (4,001) pounds.

(c) Thirty-five dollars (\$35) for any excess weight more than four thousand (4,000) pounds and less than six thousand and one (6,001) pounds.

(d) Fifty dollars (\$50) for any excess weight more than six thousand (6,000) pounds and less than eight thousand and one (8,001) pounds.

(e) Eighty dollars (\$80) for any excess weight more than eight thousand (8,000) pounds and less than ten thousand and one (10,001) pounds.

(f) One hundred ten dollars (\$110) for any excess weight more than ten thousand (10,000) pounds and less than twelve thousand and one (12,001) pounds.

(g) One hundred and fifty dollars (\$150) for any excess weight more than twelve thousand (12,000) pounds and less than fourteen thousand and one (14,001) pounds.

(h) Two hundred dollars (\$200) for any excess weight more than fourteen thousand (14,000) pounds and less than sixteen thousand and one (16,001) pounds.

(i) Two hundred fifty dollars (\$250) for any excess weight more than sixteen thousand (16,000) pounds and less than eighteen thousand and one (18,001) pounds.

(j) Three hundred dollars (\$300) for any excess weight more than eighteen thousand (18,000) pounds and less than twenty thousand and one (20,001) pounds.

(k) Five hundred dollars (\$500) for any excess weight more than twenty thousand (20,000) pounds and less than twenty-five thousand and one (25,001) pounds.

(1) One thousand dollars (\$1,000) for any excess weight more than twenty-five thousand (25,000) pounds.

(2) A complaint filed and a summons or notice to appear issued pertaining to a violation of the gross weight regulations in sections 32-1123.1 through 32-1123.11, shall specify the amount of the overweight, which the defendant is alleged to have had upon the vehicle or combination of vehicles.

(3) All fines and forfeitures shall be remitted monthly by the county treasurer to the state treasurer for deposit in the state general fund.

History: En. Sec. 3(b), Ch. 123, L. 1947; amd. Sec. 3, Ch. 243, L. 1961; amd. Sec. 25, Ch. 316, L. 1974.

Amendments

The 1974 amendment inserted "convicted of violating sections 32-1123.1 through 32-1123.11" in the first sentence of subsection (1); deleted "excepting as

provided below" from the first sentence of subsection (1); substituted "sections 32-1123.1 through 32-1123.11" for "section 32-1123 and acts amendatory thereto" in the second sentence of subsection (1) and for "this act" in subsection (2); and made minor changes in phraseology, punctuation and style.

32-1126. (1751.5) Officers may weigh vehicles and require removal of excessive loads—badges and uniforms of highway employees. (1) A peace officer, officer of the highway patrol, or employee of the department may weigh any vehicle regulated by sections 32-1123.1 through 32-1123.11, either by means of portable or stationary scales, and may require that the vehicle be driven to the nearest scales if those scales are within two (2) miles. That person may then require the driver to unload immediately that portion of the load necessary to decrease the weight of the vehicle to conform to the maximum allowable weights specified in sections 32-1123.1 through 32-1123.11.

(2) Commodities and material unloaded as required by this section shall be cared for and removed from the highway right of way by the owner or operator of the vehicle at the risk of that owner or operator. The removal shall be within a reasonable time designated by the person who has compelled the unloading.

(3) The department may establish, maintain, and operate, either intermittently or on a continuous schedule, weigh stations and require vehicles, except passenger cars and pickup trucks under eight thousand (8,000) pounds G.V.W., to enter for the purpose of weighing and inspection for compliance with all laws pertaining to their operation and safety requirements.

(4) In addition to other enforcement duties assigned under this section, an employee of the department has the same authority to enforce provisions of the motor carriers licensing law as that granted the public service commission under 8-103. This section does not relieve the public service commission from its responsibility as the lead agency as required in section 8-103, R.C.M. 1947. The commission, highway patrol, and the department shall cooperate to assure minimum duplication, and maximum coordination, of enforcement effort.

(5) An employee of the department engaged in the enforcement of this section shall wear and prominently display an identification badge or device which shows the employee's name and title. The department may authorize uniform dress for those employees.

History: En. Sec. 5, Ch. 171, L. 1931; amd. Sec. 4, Ch. 184, L. 1939; amd. Sec. 4, Ch. 243, L. 1961; amd. Sec. 1, Ch. 321, L. 1971; amd. Sec. 26, Ch. 316, L. 1974; amd. Sec. 3, Ch. 280, L. 1977.

Amendments

The 1971 amendment deleted "having reason to believe that the weight of a vehicle and load is unlawful" after "highway commission" near the beginning of the section; substituted "any vehicle as provided in section 32-1123, R. C. M.

1947" for "the same" near the middle of the first paragraph; and inserted the present third paragraph.

The 1974 amendment substituted "department" for "state highway commission" throughout the section; substituted references to sections 32-1123.1 through 32-1123.11 for section 32-1123 in subsection (1); and made minor changes in phraseology, punctuation and style.

The 1977 amendment inserted subsection (4); and redesignated former subsection (4) as subsection (5).

32-1127. (1751.6) Repealed.

Repeal

Section 32-1127 (Sec. 6, Ch. 171, L. 1931; Sec. 2, Ch. 147, L. 1933; Sec. 5, Ch. 184, L. 1939; Sec. 1, Ch. 254, L. 1955; Sec. 5, Ch. 243, L. 1961; Sec. 1, Ch. 225,

L. 1965; Sec. 1, Ch. 83, L. 1969; Sec. 1, Ch. 334, L. 1971), relating to permits for excess size and weight, was repealed by Sec. 209, Ch. 316, Laws of 1974.

32-1127.1. Permits for excess size and weight. (1) The department of highways, and local authorities in their respective jurisdictions, may, in their discretion, upon application in writing and with good cause shown, issue a special permit in writing, authorizing the applicant to operate or move a vehicle, combination of vehicles, load, object, or other thing of a size or weight exceeding the maximum specified in sections 32-1123.1 through 32-1123.11 upon a highway under the jurisdiction of and for the maintenance of which the body granting the permit is responsible; however, only the department has the discretion to issue permits for movement of a vehicle or combination of vehicles carrying built-up or reducible loads in excess of nine (9) feet in width or exceeding the length, height, or weight specified in sections 32-1123.1 through 32-1123.11. This permit shall be issued in the public interest; a carrier receiving this permit must have public liability and property

damage insurance for the protection of the traveling public as a whole. A permit may not be issued for a period of time greater than the license period provided in Title 53 or Title 32, including grace periods allowed by those titles. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department, purchase permits to expire with their registration. A license required by the state governs the issuance of a special permit. The department may issue oversize permits to dealers in implements of husbandry and self-propelled machinery which may be transferred from unit to unit by the dealer for the fees set forth in section 32-1127.3. These oversize permits expire on December 31 of each year with no grace period. For the purposes of this section, a dealer in implements of husbandry or self-propelled machinery must be a resident of the state. A post-office box number is not a permanent address under this section.

(2) The applicant for a special permit shall specifically describe the powered vehicle or towing vehicle and generally describe the type of vehicle, combination of vehicles, load, object, or other thing to be operated or moved and the particular state highways over which the vehicle, combination of vehicles, load, object, or other thing is to be moved and whether the permit is required for a single trip or for continuous operation.

History: En. 32-1127.1 by Sec. 27, Ch. 316, L. 1974.

Special Permit Valid Under Federal Aid Highway Act

The Montana state highway commission on July 1, 1956, had authority under section 32-1123 to issue special permits for overweight vehicles. Since this statute has been re-enacted into law each

time other provisions of the section were changed, continuous authority has been provided for the issuance of the special permits, and the state highway commission has the present power to issue permits without jeopardizing the right of the state of Montana to receive federal funds for highway purposes. State ex rel. Dick Irvin, Inc. v. Anderson, — M —, 525 P 2d 564.

32-1127.2. Special permits—discretion of issuer—conditions. The department or local authority may issue or withhold a special permit at its discretion, or, if the permit is issued, limit the number of trips, or establish seasonal or other time limitations within which the vehicle, combination of vehicles, load, object, or other thing described may be operated on the public highways indicated, or otherwise limit or prescribe conditions of operation of the vehicle, combination of vehicles, load, object, or other thing when necessary to assure against damage to the road foundation, surfaces or structures or safety of traffic, and may require an undertaking or other security considered necessary to compensate for injury to a roadway or road structure. During harvest no permit may be denied to oversize harvest or harvest-related agricultural machinery solely on the grounds that the travel takes place on a Saturday or Sunday.

History: En. 32-1127.2 by Sec. 28, Ch. 316, L. 1974.

32-1127.3. Special permits—fees. The following fees, in addition to the regular license and gross vehicle weight fees, shall be paid for all movements under special permits on the public highways under the jurisdiction of the department:

Six dollars (\$6) for each permit issued in excess of the size and weight

specified in sections 32-1123.1 through 32-1123.11. Term or blanket permits may not be issued for overwidth vehicles, combination of vehicles, load or other thing in excess of fifteen (15) feet, overlength vehicles, combination of vehicles, load, object or other thing in excess of eighty-five (85) feet, and overheight vehicles, combination of vehicles, load, or other thing in excess of thirteen and one-half ($13\frac{1}{2}$) feet or of a limit determined by the department. A vehicle, combination of vehicles, load, or other thing in excess of these dimensions is limited to trip permits.

History: En. 32-1127.3 by Sec. 29, Ch. 316, L. 1974.

32-1127.4. Self-propelled vehicles. A self-propelled vehicle used only for the purpose of moving haystacks on a commercial basis is subject to sections 32-1127.1 through 32-1127.9 except as follows:

(1) The vehicle, loaded or unloaded, may not exceed fifty-five (55) feet in length nor twenty (20) feet in width.

(2) A single load may not be moved on the vehicle a distance greater than seventy-five (75) miles from the point of origin on public roads.

(3) When the vehicle is hauling a load, it shall be accompanied by two (2) pilot cars. Each car shall be equipped with a flashing warning light, a red flag, and a sign with the words "wide load" written on it. One (1) car shall precede the vehicle by not less than one hundred (100) yards nor more than one-quarter ($\frac{1}{4}$) mile, and one (1) shall follow the vehicle at a distance not less than one hundred (100) yards nor more than one-quarter ($\frac{1}{4}$) mile. The following pilot car shall be in radio contact with the vehicle at all times.

(4) The speed of the vehicle shall be reasonable and proper but not in excess of thirty-five (35) miles per hour.

(5) The vehicle shall be operated only between the hours of sunrise and sunset.

(6) The vehicle may not be operated on an interstate or controlled-access highway.

(7) A term or blanket permit may be issued for the vehicle.

History: En. 32-1127.4 by Sec. 30, Ch. 316, L. 1974.

32-1127.5. Other fees—exemption. A fee of six dollars (\$6) shall be paid for each overweight permit issued, but a permit may not be issued for a period of time greater than the license period provided in Title 53 or Title 32, including grace periods allowed by those titles. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department, purchase permits to expire with their registration. A license required by the state governs the issuance of a special permit. In addition to the permit fee, there shall be charged for single trip permits: five dollars (\$5) for distances to and including one hundred (100) miles; fifteen dollars (\$15) for distances from one hundred one (101) to one hundred ninety-nine (199) miles; and twenty-five dollars (\$25) for distances over two hundred (200) miles traveled, for the excess load over

the gross allowable load or the sum of the excess axle loads, whichever is greater.

History: En. 32-1127.5 by Sec. 31, Ch. 316, L. 1974.

32-1127.6. Permits issued to governmental entities. Permits issued to the United States government, states, counties, cities and their political subdivisions, shall be issued without fee for a term beginning with the date of issuance and expiring December 31.

History: En. 32-1127.6 by Sec. 32, Ch. 316, L. 1974.

32-1127.7. Special permits—misrepresentations and violations. A person who knowingly and willfully misrepresents the size or weight of a vehicle, combination of vehicles, load, object, or other thing in obtaining a special permit, or who does not follow the requirements and conditions of the special permit, or who operates a vehicle, combination of vehicles, load, object or other thing, the gross weight of which is in excess of the maximum for which that vehicle, combination of vehicles, load, object, or other thing may be eligible for license, without first obtaining a special permit, is guilty of a misdemeanor.

History: En. 32-1127.7 by Sec. 33, Ch. 316, L. 1974.

32-1127.8. Display of permit. A special permit issued under section 32-1127.1 shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any peace officer, officer of the highway patrol, or employee of the department.

History: En. 32-1127.8 by Sec. 34, Ch. 316, L. 1974.

32-1127.9. Confiscation—action by commission. A peace officer, officer of the highway patrol, or employee of the department who finds a person operating a vehicle, combination of vehicles, load, object, or other thing in violation of the conditions of a special permit may confiscate the permit and forward it to the highway commission. The commission may return it to the permittee or revoke, cancel, or suspend it without refund. The commission shall keep a record of all action taken upon confiscated permits, and if a permit is returned to the permittee, the action taken by the commission shall be endorsed on it. A permittee whose permit is suspended or revoked may, upon request, receive a hearing before the commission or person designated by the commission. The commission, after the hearing, may reinstate the permit or revise its previous action.

History: En. 32-1127.9 by Sec. 35, Ch. 316, L. 1974.

32-1127.10. Deposit of fees. All fees collected under sections 32-1123.1 through 32-1127.9 shall be forwarded to the state treasurer for deposit in the state highway account in the earmarked revenue fund.

History: En. 32-1127.10 by Sec. 36, Ch. 316, L. 1974.

32-1128. (1751.7) When state or local road authorities may restrict right to use highways. The department by order, or a local road authority by ordinance or resolution, may prohibit the operation of or impose restrictions on the weight of a vehicle traveling on a public highway under its respective jurisdiction and for which it is responsible for maintenance, whenever the highway will be seriously damaged or destroyed by deterioration, rain, snow or other climatic conditions, unless the use of vehicles on the highway is prohibited or the permissible vehicle weights are reduced. The department, or the authority who enacts the ordinance or resolution shall erect signs designating the department's order or the authority's ordinance or resolution at each end of that portion of the highway affected, and the order or ordinance or resolution is not effective until the signs are erected. The department, or the authority by ordinance or resolution, may prohibit the operation of trucks or other commercial vehicles, or impose limitations on their weight on designated highways. These prohibitions and limitations shall be designated by appropriate signs placed on the highways.

History: En. Sec. 7, Ch. 171, L. 1931; amd. Sec. 6, Ch. 184, L. 1939; amd. Sec. 37, Ch. 316, L. 1974.

erences to "department" for references to "state road authority" throughout the section; and made minor changes in phraseology and punctuation.

Amendments

The 1974 amendment substituted ref-

32-1129. (1751.8) Repealed.

Repeal

Section 32-1129 (Sec. 8, Ch. 171, L. 1931), relating to restrictions on tire

equipment, was repealed by Sec. 209, Ch. 316, Laws of 1974.

32-1130. (1751.9) Penalties for misdemeanor. (1) It is a misdemeanor for a person, firm or corporation to violate any of the provisions of section 32-1128.

(2) A person, firm or corporation first convicted of a misdemeanor for a violation of any of the provisions of section 32-1128 shall be punished by a fine of not less than ten dollars (\$10) nor more than fifty dollars (\$50), or by imprisonment in the county or municipal jail for not less than five (5) days nor more than twenty-five (25) days; for a second conviction within one (1) year the person, firm or corporation shall be punished by a fine of not less than fifty dollars (\$50), nor more than two hundred dollars (\$200) or by imprisonment in the county or municipal jail for not less than twenty-five (25) days nor more than one hundred (100) days, or by both this fine and imprisonment; upon a third or subsequent conviction within one (1) year after the first conviction the person, firm or corporation shall be punished by a fine of not less than two hundred dollars (\$200), nor more than five hundred dollars (\$500), or by imprisonment in the county or municipal jail for not less than one hundred (100) days nor more than six (6) months, or by both this fine and imprisonment.

History: En. Sec. 9, Ch. 171, L. 1931; amd. Sec. 7, Ch. 184, L. 1939; amd. Sec. 38, Ch. 316, L. 1974.

Amendments

The 1974 amendment substituted "provisions of section 32-1128" for "provisions

of this act" in subsections (1) and (2); and made minor changes in phraseology, punctuation and style.

32-1131. (1752) Speed and traffic regulations—disposition of fines. Any and all fines collected for the violation of any of the provisions of this act shall belong to the general road fund of the county, and shall, immediately after their collection, be paid over by the court or magistrate collecting the same to the county treasurer for the use and benefit of that fund, except for that portion of the fines, as provided for in section 4 [75-5304] of this act, which the county treasurer shall transmit to the state treasurer of Montana and by him credited to the automobile driver education account in the earmarked revenue fund.

History: En. Sec. 1, Ch. 10, Ch. 72, L. 1913; re-en. Sec. 1, Ch. 10, Ch. 141, L. 1915; re-en. Sec. 1752, R. C. M. 1921; amd. Sec. 12, Ch. 226, L. 1965; amd. Sec. 11, Ch. 214, L. 1969.

Compiler's Notes

Section 75-5304 was repealed by Sec. 12, Ch. 214, Laws 1969. For present provisions, see sec. 75-7901 et seq.

Amendments

The 1965 amendment added the exception at the end of the section commencing with "except the penalty."

The 1969 amendment substituted "for that portion of the fines" for "the penalty assessments levied and paid."

Separability Clause

Section 13 of Ch. 226, Laws 1965 read "It is the intent of the legislative as-

sembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clause

Section 12 of Ch. 214, Laws 1969 read "Sections 75-5301 through 75-5309, R. C. M. 1947, are repealed."

Effective Dates

Section 14 of Ch. 226, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 9, 1965.

Section 13 of Ch. 214, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 4, 1969.

32-1143 to 32-1145. Repealed.

Repeal

Sections 32-1143 to 32-1145 (Secs. 1 to 3, Ch. 7, L. 1941), relating to use of white canes by the blind, were repealed by Sec.

7, Ch. 181, Laws 1971. For similar provisions in current law, see secs. 71-1303 to 71-1308.

CHAPTER 12—UNIFORM ACCIDENT REPORTING ACT

Section 32-1208. Written reports of accidents, additional information, form of report.
32-1213. Accident reports confidential.

32-1201. Definitions.

Cross-References

Highway patrol board abolished and functions transferred, sec. 82A-1205 (2).

Highway patrol functions transferred, sec. 82A-1206.

Registrar's position abolished and functions transferred, sec. 82A-1205 (1).

32-1202. Accidents involving death or personal injuries.

References

Parini v. Lanch, 148 M 188, 418 P 2d 861, 864.

32-1208. Written reports of accidents, additional information, form of report. (a) The operator of any motor vehicle which is in any manner involved in an accident within this state, in which any person is killed or injured or in which damage to the property of any one person in excess of two hundred and fifty dollars (\$250) is sustained, shall within ten (10) days after such accident report the matter in writing to the supervisor.

(b) and (c) * * * [Same as parent volume.]

(d) Form of report. The form of accident report required under section 32-1208, shall contain information sufficient to enable the department to determine whether the requirements for the deposit of security for safety responsibility are inapplicable by reason of the existence of insurance or other exemptions specified in this act.

History: En. Sec. 9, Ch. 210, L. 1939; amd. Sec. 5, Ch. 256, L. 1959; amd. Sec. 1, Ch. 52, L. 1971.

Amendments

The 1971 amendment revised and reworded subsection (a) to raise the mini-

mum damage requiring a report from \$100 to \$250, and to apply the amount to damage sustained by any one person rather than to total damage; and substituted "exemptions" for "exceptions" at the end of subsection (d).

32-1213. Accident reports confidential. (a). * * * [Same as parent volume.]

(b) All accident reports and supplemental information filed as required by this act shall be confidential and not open to general public inspection, nor shall copying of lists of such reports be permitted, except, however, that the report and supplemental information filed by law enforcement personnel, as required by this act may be examined by any person named in such report or reports or by any driver, passenger or pedestrian involved in the accident or by his representative designated in writing, or if such person shall be deceased, by his executor or administrator or by the attorney representing such executor or administrator.

(c). * * * [Same as parent volume.]

History: En. Sec. 14, Ch. 210, L. 1939; amd. Sec. 9, Ch. 256, L. 1959; amd. Sec. 1, Ch. 142, L. 1973.

Amendments

The 1973 amendment substituted "filed as required by this act" near the beginning of subsection (b) for "filed in connection with the administration of the laws of this state relating to the deposit of security or proof of financial responsibility"; substituted "the report and supplemental information filed by law enforcement personnel, as required by this act" in subsection (b) for "such reports and supplemental information"; inserted "or by any driver, passenger or pedestrian involved in the accident" in the latter part of subsection (b); added "or if such per-

son shall be deceased, by his executor or administrator or by the attorney representing such executor or administrator" at the end of subsection (b); and made a minor change in phraseology.

Inadmissibility in Evidence

In negligence action by driver of automobile against city and driver of city road grader with whom he collided, accident report filed by city driver with Butte city police department was privileged, confidential and inadmissible and its admission into evidence over objection of city driver was prejudicial error even though case was heard by court without jury. *Morrison v. City of Butte*, 150 M 106, 431 P 2d 79.

32-1215. Any incorporated city may require accident reports.

Inadmissibility in Evidence

In negligence action by driver of automobile against city and driver of city road

grader with whom he collided, accident report filed by city driver with Butte city police department was privileged, confi-

dential and inadmissible and its admission into evidence over objection of city driver was prejudicial error even though case was heard by court without jury. Morrison v. City of Butte, 150 M 106, 431 P 2d 79.

CHAPTER 13—GOOD ROADS DAY

(Repealed—Section 12-109, Chapter 197, Laws of 1965, effective December 31, 1966)

32-1301. (1764) Repealed.

Repeal

This section (Sec. 1, Ch. 20, L. 1915), relating to good roads day, was repealed

by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sec. 32-4401.

CHAPTER 14—PRIVATE ROADS, HOW ESTABLISHED

32-1401. (1765) Repealed.

Repeal

Section 32-1401 (Sec. 2780, Pol. C. 1895), relating to establishment of pri-

vate roads, was repealed by Sec. 209, Ch. 316, Laws of 1974.

CHAPTER 15—FERRIES

Section 32-1502. Notice of application.

32-1502. (1767) Notice of application. The board of commissioners may not grant authority to erect a toll ferry until the notice of the intended application has been given as required in section 32-1503.

History: En. Sec. 2821, Pol. C. 1895; Amendments

re-en. Sec. 1458, Rev. C. 1907; re-en. Sec. 1767, R. C. M. 1921; amd. Sec. 39, Ch. 316, L. 1974. Cal. Pol. C. Sec. 2844.

The 1974 amendment substituted "as required in section 32-1503" for "as required in this article"; and made minor changes in phraseology.

CHAPTER 16—DEPARTMENT OF HIGHWAYS— DIRECTOR—POWERS AND DUTIES

Section 32-1627. State payment of construction and maintenance costs within municipalities—municipal share of curb and gutter costs.

32-1628. Bypassing of municipalities—consent of municipal governing body.

32-1631.1. Definition of public highways.

32-1632. Appointment of employees as peace officers.

32-1633. Training of department peace officers—rules.

32-1634. Training required before arrests authorized.

32-1635. Official attire required for making arrests and carrying firearms.

32-1636. Power to inspect vehicle registration, receipts and other documents.

32-1637. Identification badge and uniform.

32-1638. [Transferred.]

32-1639. Offenses for which arrest authorized.

32-1640. Co-operation with other agencies.

32-1641. Duty of authorized employee upon making an arrest—power to fix and accept bail—fees of justices of peace.

32-1601 to 32-1618. (1783 to 1798) Repealed.

Repeal

These sections (Secs. 1 to 16, Ch. 10, Ex. L. 1921; Sec. 1, Ch. 129, L. 1925; Secs. 1, 2, Ch. 92, L. 1939; Sec. 1, Ch. 111, L. 1941; Secs. 1 to 6, Ch. 86, L. 1945; Sec.

1, Ch. 155, L. 1945; Sec. 1, Ch. 117, L. 1953; Sec. 1, Ch. 118, L. 1953; Sec. 1, Ch. 91, L. 1955; Sec. 1, Ch. 43, L. 1957; Sec. 1, Ch. 98, L. 1959; Sec. 1, Ch. 210, L. 1959; Sec. 1, Ch. 124, L. 1961; Sec. 1, Ch.

180, L. 1961; Sec. 1, Ch. 182, L. 1961; Sec. 1, Ch. 222, L. 1961; Sec. 1, Ch. 91, L. 1963; Secs. 1, 2, Ch. 143, L. 1963; Sec. 1, Ch. 125, L. 1965; Secs. 17, 18, Ch. 177, L. 1965), relating to the powers and the duties of the state highway commission

and the highway engineer, were repealed by Sec. 158, Ch. 263, Laws 1955; Sec. 12-109, Ch. 197, Laws 1965. For new law, see secs. 32-2401 to 32-2413, 32-3902 to 32-3916, 32-4016, 32-4101 to 32-4103, 82A-706.1.

32-1619. (1799) Repealed.

Repeal

Section 32-1619 (Sec. 17, Ch. 10, Ex. L., 1921; Sec. 212, Ch. 147, L. 1963), relating

to disposition of state highway moneys, was repealed by Sec. 209, Ch. 316, Laws of 1974.

32-1620. (1800) Repealed.

Repeal

This section (Sec. 18, Ch. 10, Ex. L. 1921; Sec. 7, Ch. 86, L. 1945; Sec. 18, Ch. 97, L. 1961), relating to claims against

the state highway commission, was repealed by Sec. 12-109, Ch. 197, Laws of 1965.

32-1622 to 32-1626. Repealed.

Repeal

These sections (Sec. 1, Ch. 15, L. 1955; Secs. 1, 2, Ch. 30, L. 1955; Sec. 1, Ch. 254, L. 1957; Sec. 1, Ch. 204, L. 1961; Sec. 1, Ch. 219, L. 1963), relating to state

and federal aid highways were repealed by Sec. 12-109, Ch. 197, Laws 1965. For new law, see secs. 32-2302, 32-2411 and 32-2414 to 32-2416.

32-1627. State payment of construction and maintenance costs within municipalities—municipal share of curb and gutter costs. (1) Except as provided in subsection (2) of this section, the department of highways shall pay the entire costs of construction and maintenance of streets and highways which:

(a) Are state highway routes; and

(b) Are within municipalities incorporated prior to January 1, 1965.

(2) An incorporated municipality shall pay one-half ($\frac{1}{2}$) of the state's share of the cost of curbs and gutters along those streets and highways.

History: En. Sec. 1, Ch. 210, L. 1965; amd. Sec. 40, Ch. 316, L. 1974.

Title of Act

An act relating to construction and maintenance of certain streets and highways in or near incorporated municipalities.

Amendments

The 1974 amendment substituted "department of highways" for "state highway commission"; and made minor changes in phraseology.

Construction of Sidewalk

City had no authority to construct sidewalk within the right-of-way boundary line of a state highway although within the city limits, without notice or consultation with the state highway department, nor did it have authority to charge the costs of such construction to the abutting property owner. *Palffy v. Director of Finance of City of Bozeman*, — M —, 540 P 2d 955.

32-1628. Bypassing of municipalities—consent of municipal governing body. (1) The department may not construct highway bypasses or highway relocation projects without prior consent of the governing body of an incorporated municipality when the bypasses or projects:

(a) Are not part of the national system of interstate highways built under the national defense highway act; and

(b) Divert motor vehicles from an existing highway route through a municipality incorporated prior to January 1, 1965.

(2) The department shall notify the governing body of the municipality by certified mail that it proposes to bypass the municipality. A contract may not be let nor work commenced until the governing body notifies the department of its consent, or until the elapse of sixty (60) days after the notice has been sent by the department to the municipality, whichever first occurs. The failure of the municipality to act and notify the department of its action within the sixty (60) day period is implied consent to the bypass.

(3) Actual consent or refusal to bypass shall be in the form of a resolution, duly adopted by a majority of the members of the governing body of the municipality.

(4) The governing body may not withdraw consent once the department has been notified of the consent.

History: En. Sec. 2, Ch. 210, L. 1965; amd. Sec. 41, Ch. 316, L. 1974.

vided the act should be in effect from and after its passage and approval. Approved March 6, 1965.

Amendments

The 1974 amendment substituted "department" for "highway commission" and "commission" throughout the section; deleted a final subsection which stated that nothing in the act shall modify section 32-1625; and made minor changes in phraseology.

Retrospective Application

Statute would not be enforced in favor of nonconsenting municipality where state highway commission had acquired rights and obligations and begun construction of the bypass before its enactment and enactment did not disclose legislative intent to apply retroactively. *City of Harlem v. State Highway Commission*, 149 M 281, 425 P 2d 718.

Effective Date

Section 3 of Ch. 210, Laws, 1965 pro-

32-1629, 32-1629.1 to 32-1631. Repealed.

Repeal

Sections 32-1629, 32-1629.1 to 32-1631 (Secs. 1 to 3, Ch. 128, L. 1965; Secs. 1, 2,

Ch. 309, L. 1967) relating to littering on highway, were repealed by Sec. 12, Ch. 323, Laws 1971.

32-1631.1. Definition of public highways. In sections 32-1632 through 32-1641, the term "public highways" means "highways" as defined in section 32-2114.

History: En. Sec. 7, Ch. 242, L. 1971; Sec. 32-1638, R. C. M. 1947; amd. and redes. 32-1631.1 by Sec. 48, Ch. 316, L. 1974.

Amendments

The 1974 amendment renumbered this section; inserted "In sections 32-1632 through 32-1641"; and made minor changes in phraseology.

32-1632. Appointment of employees as peace officers. The director of highways may appoint employees of the department as peace officers to carry out sections 32-1632 through 32-1641. The employees appointed may include only those employees of the department who are employed in the administration of the gross vehicle weight functions of the department. Each employee appointed shall be issued a certificate of appointment and execute an oath of office which shall be entered into the records of the department.

History: En. Sec. 1, Ch. 242, L. 1971; amd. Sec. 42, Ch. 316, L. 1974.

Title of Act

An act authorizing the highway com-

mission to grant certain employees of the state highway commission the power of arrest in specified instances, providing for rules and regulations, establishing qualifications to accept bail, issue summons, file complaints, and providing for co-operation with other peace officers.

Amendments

The 1974 amendment substituted the first sentence for "The state highway

commission is hereby empowered to appoint employees as peace officers to carry out the provisions expressly set forth in this act"; substituted "department" for "commission" in the second sentence; and made minor changes in phraseology.

Cross-References

Arrest by a peace officer, sec. 95-608.
Definition of peace officer, sec. 95-210.

32-1633. Training of department peace officers—rules. The department shall provide such training as required to qualify those employees to competently perform their duties under sections 32-1632 through 32-1641, and shall adopt such rules as are required and necessary for qualification of those employees as peace officers.

History: En. Sec. 2, Ch. 242, L. 1971; amd. Sec. 43, Ch. 316, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "commission"; substituted "under sections 32-1632 through 32-1641" for "under this act"; and made minor changes in phraseology.

32-1634. Training required before arrests authorized. An employee may not make arrests until he has successfully completed such training as required by the department.

History: En. Sec. 3, Ch. 242, L. 1971; amd. Sec. 44, Ch. 316, L. 1974.

Amendments

The 1974 amendment substituted "department" for "commission"; and made minor changes in phraseology.

32-1635. Official attire required for making arrests and carrying firearms. Qualified employees may make arrests throughout the state only when dressed in official uniform and displaying the official badge authorized by the department. Authorized employees may not carry firearms unless officially attired.

History: En. Sec. 4, Ch. 242, L. 1971; amd. Sec. 45, Ch. 316, L. 1974.

Amendments

The 1974 amendment substituted "department" for "highway commission"; and made minor changes in phraseology.

32-1636. Power to inspect vehicle registration, receipts and other documents. Employees of the department appointed under section 32-1632 may when officially dressed make reasonable inspection of vehicle registration receipts, department receipts and registrations, special permits, and other documents required to be carried in or for a vehicle traveling on the public highways of Montana.

History: En. Sec. 5, Ch. 242, L. 1971; amd. Sec. 46, Ch. 316, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "state highway commission"; substituted "under section 32-1632" for "under this act"; and made minor changes in phraseology and punctuation.

32-1637. Identification badge and uniform. Employees of the department engaged in the enforcement of sections 32-1632 through 32-1641 shall wear and prominently display an identification badge or device with

the employee's name and title shown on the identification badge or device. The department may authorize uniform dress for department employees engaged in such enforcement.

History: En. Sec. 6, Ch. 242, L. 1971; amd. Sec. 47, Ch. 316, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "state highway commission"; substituted "of sections 32-1632 through 32-1641" for "of this act"; and made minor changes in phraseology.

32-1638. [Transferred.]

Compiler's Notes

Section 48, Ch. 316, Laws of 1974 re-numbered this section as sec. 32-1631.1.

32-1639. Offenses for which arrest authorized. Employees appointed under section 32-1632 may make arrests for violations of the following statutory provisions only:

- (1) Sections 32-1123.1 through 32-1130;
- (2) Sections 32-3201 through 32-3203;
- (3) Title 32, chapter 33;
- (4) Title 32, chapter 34;
- (5) Section 53-119.1;
- (6) Section 84-1833;
- (7) Sections 84-1841 through 84-1844;
- (8) Sections 84-6601 through 84-6605.

These employees may not arrest for violations other than specified in this section.

History: En. Sec. 8, Ch. 242, L. 1971; amd. Sec. 49, Ch. 316, L. 1974.

Amendments

The 1974 amendment substituted "Employees appointed under section 32-1632" in the first sentence for "Authorized employees of the state highway commission"; substituted "Section 32-1123.1" for "Sec-

tion 32-1122" in subdivision (1); substituted subdivision (3) for references to sections 32-3301 through 32-3316; substituted subdivision (4) for references to sections 32-3401 through 32-3406; deleted a former subdivision (5) referring to sections 53-118.1 through 53-118.4; and made minor changes in phraseology and punctuation.

32-1640. Co-operation with other agencies. Such employees of the department shall co-operate with other law enforcement agencies.

History: En. Sec. 9, Ch. 242, L. 1971; amd. Sec. 50, Ch. 316, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "state highway commission"; and made minor changes in phraseology.

32-1641. Duty of authorized employee upon making an arrest—power to fix and accept bail—fees of justices of peace. (1) Such employees, upon making an arrest, shall deliver to the offender a form of notice to appear describing the nature of the offense with instructions on the notice to appear for the offender to report to the nearest justice of the peace. The employee may accept a deposit for appearance justifiable for the offense charged. The person arrested may be detained for a reasonable time for the purpose of issuing the notice. If the employee accepts bail, he shall give a signed receipt to the offender setting forth the amount received.

The employee shall then deliver the bail money to the justice of the peace before whom the offender is to appear, and the justice of the peace shall give a receipt to the employee for the amount of bail money delivered. After the filing of the complaint and appearance of the defendant, the justice of the peace shall assume jurisdiction and may set and accept further appearance bail bond.

(2) For the purpose of sections 32-1632 through 32-1641 only, the fees of justices of the peace in all offenses in which the statutory fine is five dollars (\$5) or less, shall be one dollar (\$1), but if the statutory fine is in excess of five dollars (\$5), the justices of the peace are permitted the fee prescribed by law; no additional fees shall be paid justices of the peace where salaries are fixed by law.

History: En. Sec. 10, Ch. 242, L. 1971; amd. Sec. 51, Ch. 316, L. 1974.

Amendments

The 1974 amendment substituted "no-

tice to appear" for "summons" in subsection (1); substituted "sections 32-1632 through 32-1641" for "this act" in subsection (2); and made minor changes in phraseology, punctuation and style.

CHAPTER 17—NATIONAL DEFENSE HIGHWAY PROGRAM

Section 32-1702. Powers and duties.

32-1703. Highway safety and driver training program.

32-1701. Repealed.

Repeal

Section 32-1701 (Sec. 1, Ch. 82, L. 1941; Sec. 2, Ch. 94, L. 1953), relating to abolishment of the state highway traffic ad-

visory committee and transfer of its functions to the director of the civil defense agency, was repealed by Sec. 73, Ch. 94, Laws of 1974.

32-1702. Powers and duties. The department of military affairs shall:

(1) Co-operate with the agencies of this and other states and of the federal government which are connected with national defense, in the formulation and execution of plans for the rapid and safe movement over the highways of troops, vehicles of a military nature, and materials affecting the national defense.

(2) Co-ordinate the activities of the department of highways and the department of justice in a manner which will best serve to carry out any such plan for the rapid and safe movement of troops, vehicles, and materials as referred to in paragraph (1) of this section.

(3) Solicit the co-operation of officials of the various political subdivisions of the state in the proper execution of these plans.

(4) Have the authority to take an inventory, by counties, of the trucks and buses in the state, publicly and privately owned, which would be available in case of emergency affecting the national defense.

History: En. Sec. 2, Ch. 82, L. 1941; amd. Sec. 3, Ch. 94, L. 1953; amd. Sec. 1, Ch. 94, L. 1974.

Amendments

The 1974 amendment substituted "department of military affairs" for "director" in the first sentence; substituted "depart-

ment of highways and the department of justice" in subdivision (2) for "Montana highway commission, the Montana highway patrol, and the registrar of motor vehicles"; inserted "Have the authority" at the beginning of subdivision (4); and made minor changes in phraseology, punctuation and style.

32-1703. Highway safety and driver training program. The department of military affairs may, in conjunction with any interested public or private agencies, conduct a highway safety and driver training program as an aid to the national defense.

History: En. Sec. 3, Ch. 82, L. 1941; amd. Sec. 4, Ch. 94, L. 1953; amd. Sec. 2, Ch. 94, L. 1974.

Amendments

The 1974 amendment substituted "department of military affairs" for "director."

CHAPTER 18—STOCK LANE LAW

(Repealed—Section 12-109, Chapter 197, Laws of 1965, effective December 31, 1966)

32-1801 to 32-1804. Repealed.

Repeal

These sections (Secs. 1 to 4, Ch. 63, L. 1939), the Stock Lane Law, were repealed

by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sec. 32-4015.

CHAPTER 19—MONTANA TOLL BRIDGE AUTHORITY

(Repealed—Section 12-109, Chapter 197, Laws of 1965)

32-1901 to 32-1915. Repealed.

Repeal

These sections (Secs. 1 to 15, Ch. 31, L. 1953; Sec. 11-117, Ch. 264, L. 1963),

relating to toll bridges, were repealed by Sec. 12-109, Ch. 197, Laws of 1965.

CHAPTER 20—CONTROLLED ACCESS HIGHWAYS

(Repealed—Section 12-109, Chapter 197, Laws of 1965)

32-2001 to 32-2010. Repealed.

Repeal

These sections (Secs. 1 to 10, Ch. 104, L. 1955; Secs. 1 to 3, Ch. 121, L. 1957; Sec. 1, Ch. 134, L. 1959; Secs. 1 to 9, Ch. 156, L. 1963; Sec. 2, Ch. 90, L. 1965), relating to controlled access highways, were

repealed by Sec. 12-109, Ch. 197, Laws 1965. For new law, see secs. 32-3920, 32-4018, and 32-4301 to 32-4311. Sec. 1, Ch. 90, L. 1965 which was inadvertently classified as section 32-2008.1 has been transferred to section 32-4308.1.

CHAPTER 21—UNIFORM ACT REGULATING TRAFFIC ON HIGHWAYS

- Section 32-2102. Definitions—vehicle—motor vehicle—motorcycle—motor-driven cycle—police vehicle—authorized emergency vehicle—emergency service vehicle—school bus—bicycle—special mobile equipment.
- 32-2119. Official traffic-control devices—traffic-control signal—railroad sign or signal—flag person—flag vehicle.
- 32-2124.3. Forest development road, special service road defined.
- 32-2124.4. State laws applicable on forest development roads—enforcement.
- 32-2124.5. Special service roads not subject to state law enforcement.
- 32-2128. Police vehicles and authorized emergency vehicles.
- 32-2133. Department of highways to adopt sign manual.
- 32-2134. Department of highways to sign all state highways.
- 32-2134.1. Injury to or removal of sign or marker as misdemeanor—penalty.
- 32-2134.2. Reward for information on injury to or removal of sign or marker.
- 32-2134.3. Posting of act along highways.
- 32-2137. Traffic-control signal legend.
- 32-2142. Persons under the influence of alcohol or of drugs.
- 32-2142.1. Chemical blood, breath, or urine tests.
- 32-2142.2. Right of appeal to court.
- 32-2142.3. Administration of tests.

HIGHWAYS, BRIDGES AND FERRIES

- 32-2143. Reckless driving.
- 32-2143.1. Permission of authorities to hold speed contest.
- 32-2143.2. Penalty for unauthorized drag racing.
- 32-2143.3. Careless driving.
- 32-2143.4. Penalty.
- 32-2144. Speed restrictions—basic rule.
- 32-2144.1. Declaration of speed limits—exception to the basic rule.
- 32-2144.2. Not applicable to certain streets and highways.
- 32-2144.3. Termination of declaration.
- 32-2144.4. Subject to Administrative Procedure Act.
- 32-2144.5. Lower speed limits.
- 32-2144.6. Enforcement.
- 32-2144.7. Existing statutes not affected.
- 32-2145. Establishment of special speed zones.
- 32-2146. When local authorities may and shall alter limits.
- 32-2147. Minimum speed regulations.
- 32-2148. Special speed limitations on trucks, truck-tractors, motor-driven cycles and vehicles towing house trailers.
- 32-2149. Special speed limitations.
- 32-2150.3. Erection of signs.
- 32-2157. No-passing zones.
- 32-2158. One-way roadways and rotary traffic islands.
- 32-2163. Restrictions on use of controlled access roadway.
- 32-2170. Vehicle approaching or entering intersection.
- 32-2173. Vehicle entering highway from private road, driveway or public approach ramp.
- 32-2174. Vehicles approaching "Yield" sign.
- 32-2175. Operation of vehicles on approach of police vehicles or authorized emergency vehicles.
- 32-2177. Pedestrians' right of way in crosswalk.
- 32-2188. Riding on roadways and bicycle paths.
- 32-2190. Lamps and other equipment on bicycles.
- 32-2192. All vehicles must stop at certain railroad grade crossings.
- 32-2193. Certain vehicles must stop at all railroad grade crossings.
- 32-2195. Vehicles must stop at stop signs.
- 32-2197. Overtaking and passing school bus.
- 32-2198. Special lighting equipment on school buses.
- 32-21-102. Additional parking regulations.
- 32-21-105. Riding on motorcycles.
- 32-21-105.1. Headgear required for minor motorcycle riders—noise suppression devices.
- 32-21-112.1. Riding in house trailers.
- 32-21-113. Shooting from or across highway.
- 32-21-122. Additional equipment required on certain vehicles.
- 32-21-130. Lamps on other vehicles and equipment—emblem to be used on certain slow-moving vehicles—slow-moving vehicles to permit overtaking vehicles to pass.
- 32-21-132. Audible and visual signals on vehicles.
- 32-21-143.1. Brake equipment required.
- 32-21-143.2. Performance ability of brakes.
- 32-21-143.3. Maintenance of brakes.
- 32-21-143.4. Hydraulic brake fluid.
- 32-21-149. Restrictions as to tire equipment.
- 32-21-149.1. Fenders, splash aprons or flaps required on certain vehicles—dimension and location—violation a misdemeanor—penalty.
- 32-21-150.1. Seat belts required in new vehicles.
- 32-21-150.2. Specifications for seat belts.
- 32-21-150.3. Penalty for seat belt violations.
- 32-21-151. Certain vehicles to carry flares or other warning devices.
- 32-21-155.1. Semiannual inspection of school buses.
- 32-21-163. Unlawful operation by child under eighteen—concurrent original jurisdiction of district court and justice court—penalties—impounding of vehicle, when.
- 32-21-164. Summons—issuing to child under eighteen.
- 32-21-166. Vehicle equipment safety compact—text.
- 32-21-167. Legislative findings on equipment safety.

- 32-21-168. Equipment requirements continued in force.
- 32-21-169. State commissioner on vehicle equipment safety commission.
- 32-21-170. Retirement of equipment safety commission employees.
- 32-21-171. Governmental agencies to co-operate with equipment safety commission.
- 32-21-172. Documents filed and notices given by equipment safety commission.
- 32-21-173. Equipment safety commission budgets.
- 32-21-174. Equipment safety commission accounts.
- 32-21-175. Governor as executive head for compact purposes.
- 32-21-176. Grazing livestock on highway unlawful.
- 32-21-177. Exclusions from preceding section.
- 32-21-178. Penalty for violating act.
- 32-21-179. Flagmen escorts—prohibitions against nighttime herding on public highways.
- 32-21-180. Violations.

32-2102. Definitions — vehicle — motor vehicle — motorcycle — motor-driven cycle — police vehicle — authorized emergency vehicle — emergency service vehicle — school bus — bicycle — special mobile equipment. (a) to (d) * * * [Same as parent volume.]

(e) Police Vehicle. Any vehicle used in the service of any law enforcement agency.

(f) Authorized Emergency Vehicles. Vehicles of the fire department, fire patrol and such ambulances and emergency vehicles as are designated or authorized by the board.

(g) Emergency Service Vehicles. Emergency service vehicles of state, county, or municipal departments or public service vehicles, which, by the nature of their operation, cause a vehicular traffic hazard; or authorized tow cars.

(h) School Bus. Every motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school or privately owned and operated for compensation for the transportation of children to or from school.

(i) Bicycle. Every device propelled by human power upon which any person may ride, having two (2) tandem wheels either of which is more than twenty (20) inches in diameter.

(j) Special Mobile Equipment. Every vehicle not designed or used primarily for the transportation of persons or property and incidentally operated or moved over the highways, including farm tractors, road construction or maintenance machinery, ditch-digging apparatus, well-boring apparatus and concrete mixers. The foregoing enumeration shall be deemed partial and shall not operate to exclude other such vehicles which are within the general terms of this section.

History: En. Sec. 2, Ch. 263, L. 1955; amd. Sec. 1, Ch. 153, L. 1975.

Amendments

The 1975 amendment inserted subsection (e) defining police vehicles; redesignated former subsection (e) as (f) and

rewrote the definition of authorized emergency vehicles in that subsection; inserted subsection (g) defining emergency service vehicles; and redesignated former subsections (f) to (h) as subsections (h) to (j). For prior version, see parent volume.

32-2114. Street or highway—private road or driveway—roadway, etc.

References

Faucette v. Christensen, 145 M 28, 400 P 2d 883.

32-2115. Intersection.**Nature of Roads Forming Intersection**

An intersection is formed when two publicly maintained ways join at any angle. *Rader v. Nicholls*, 140 M 459, 373 P 2d 312, 313.

References

Faucette v. Christensen, 145 M 28, 400 P 2d 883.

32-2119. Official traffic-control devices — traffic-control signal — railroad sign or signal — flag person — flag vehicle. (a) to (c) * * *
[Same as parent volume.]

(d) Flag person. Any person who directs, controls or alters the normal flow of vehicular traffic upon a street or highway as a result of a vehicular traffic hazard then present on that street or highway. This person, except a uniformed traffic enforcement officer exercising his duty as a result of a planned vehicular traffic hazard, shall be equipped as required by the rules and regulations of the Montana department of highways.

(e) Flag vehicle. Any vehicle equipped as required by law or Montana department of highways regulations to warn or guide vehicular traffic. When not being operated as a flag vehicle, signs shall be removed.

History: En. Sec. 19, Ch. 263, L. 1955; amd. Sec. 1, Ch. 148, L. 1975.

Amendments

The 1975 amendment added subsections (d) and (e).

Detour Signs and Barricades

Detour signs and "zebra board" barri-

cades are official traffic-control devices when erected by public authority in conformity with provisions of the Highway Code; their use to block off an unopened section of highway under construction negatives any implied consent to use of the section. *Gilleard v. Draine*, 159 M 167, 496 P 2d 83.

32-2124.3. Forest development road, special service road defined. For the purpose of this act a "forest development road" is defined as a road located on national forest lands or on a right of way acquired by the United States and used for the protection, administration and utilization of the national forests and other lands administered by the United States forest service; and a "special service road" is defined as a forest development road or segment thereof, the right of way for which is controlled by the United States and which is not a part of the highway system of the state or of a county or other public road authority of this state, designated by the forest service, pursuant to the regulations of the secretary of the United States department of agriculture, as a special service road for the purpose of controlling and regulating its use to accomplish the purposes of the secretary of agriculture's regulations applicable to the administration of the forest development transport system.

History: En. Sec. 1, Ch. 139, L. 1971.

Title of Act

An act to make Montana traffic laws applicable to forest development roads except as additional or conflicting rules

may be designated by the United States forest service for portions thereof designated as special service roads, and to confer law enforcement jurisdiction upon the Montana highway patrol and sheriffs of this state to enforce the traffic laws.

32-2124.4. State laws applicable on forest development roads—enforcement. Forest development roads in the state of Montana, whether or

not they meet the definition of a public highway by the laws of this state, are subject to the traffic laws of this state and the Montana highway patrol and county sheriffs of this state shall have jurisdiction thereon to investigate accidents and enforce the Montana traffic laws.

History: En. Sec. 2, Ch. 139, L. 1971.

32-2124.5. Special service roads not subject to state law enforcement. When forest development roads, or segments thereof, are designated as special service roads by the United States forest service and by such designation are subjected to traffic rules in addition to or in conflict with the Montana traffic laws, neither the additional nor conflicting traffic rules so prescribed by the forest service nor the Montana traffic law with which they conflict shall be within the jurisdiction of law enforcement officers of this state as to such special service road.

History: En. Sec. 3, Ch. 139, L. 1971.

32-2128. Police vehicles and authorized emergency vehicles. (a) The driver of a police vehicle or authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section, but subject to the conditions herein stated.

(b) The driver of a police vehicle or authorized emergency vehicle may:

1 to 4. * * * [Same as parent volume.]

(c) The exemptions herein granted to a police vehicle or authorized emergency vehicle shall apply only when such vehicles are making use of audible and visual signals meeting the requirements of section 32-21-132, except that an authorized emergency vehicle operated as a police vehicle need not be equipped with or display a red light visible from in front of the vehicle.

(d) The foregoing provisions shall not relieve the driver of a police vehicle or authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others.

History: En. Sec. 25.1, Ch. 263, L. 1955; amd. Sec. 1, Ch. 169, L. 1957; amd. Sec. 2, Ch. 153, L. 1975.

Amendments

The 1975 amendment inserted "a police vehicle or" before "authorized emergency vehicle" throughout the section; and made minor changes in phraseology.

32-2133. Department of highways to adopt sign manual. The department of highways shall adopt a manual and specifications for a uniform system of traffic-control devices consistent with this act for use upon highways within the state. This uniform system shall correlate with and so far as possible conform to the system then current as approved by the American association of state highway officials; however, the department shall adopt for use on controlled access highways, the interstate

sign manual as adopted by the American association of state highway officials, February 10, 1958, and approved by the United States department of commerce, bureau of public roads, February 21, 1958, and all subsequent amendments relating thereto.

History: En. Sec. 30, Ch. 263, L. 1955; amd. Sec. 1, Ch. 241, L. 1959; amd. Sec. 52, Ch. 316, L. 1974.

Amendments

The 1974 amendment substituted "department of highways" for "state highway commission" and "department" for "commission"; and made minor changes in phraseology.

Lack of Uniformity

Where plaintiff attempted to pass defendant's truck 250 feet from unmarked intersection, and was struck by defendant's truck as it started to make a left-hand turn, in reconciling this section with section 32-2156, which prohibits driving to the left of the center line 100 feet from intersection, it was not error on the

judge's part to refuse to instruct jury on the latter section. *Graveley v. Springer*, 145 M 486, 402 P 2d 41.

Manual as Evidence

In action for wrongful death of driver of state highway truck killed while sanding road in snowstorm, it was error to admit into evidence Manual on Uniform Traffic Control Devices adopted by highway commission where manual required that appropriate signs be erected warning public of road work but did not specifically designate who was to erect them. *Williams v. Maley*, 150 M 261, 434 P 2d 398.

References

Faucette v. Christensen, 145 M 28, 400 P 2d 883.

32-2134. Department of highways to sign all state highways. (a) The department of highways shall place and maintain traffic-control devices, conforming to its manual and specifications, upon all state highways it considers necessary to indicate and to carry out this act or to regulate, warn, or guide traffic.

(b) A local authority may not place or maintain a traffic-control device upon a highway under the jurisdiction of the department except by the latter's permission.

(c) Only the department may erect and maintain these traffic-control devices conforming to its manual and specifications on a controlled access highway or controlled access facility. The erection of a sign, marker, or emblem on a controlled access facility or controlled access highway by any other public authority, or agent, or by a private individual, firm or corporation is unlawful and a misdemeanor and punishable as provided in subsection (e).

(d) The erection or maintenance of a sign, marker, emblem or traffic-control device on a state highway except a controlled access highway or controlled access facility, is subject to the rules, regulations, and specifications the department adopts and publishes in the interest of public safety and convenience.

(e) The erection of a sign, emblem, marker or traffic-control device in violation of this section is a misdemeanor, punishable by a fine of not less than twenty-five dollars (\$25) nor more than three hundred dollars (\$300).

(f) An unauthorized sign, emblem, marker or traffic-control device or portion thereof encroaching into, over, or upon a right of way of a state highway, or controlled access highway is a public nuisance, and the department may remove it or cause it to be removed without notice and without liability for the removal.

History: En. Sec. 31, Ch. 263, L. 1955; amd. Sec. 1, Ch. 224, L. 1959; amd. Sec. 53, Ch. 316, L. 1974.

Amendments

The 1974 amendment substituted "department of highways" for "state highway commission" and "department" for

"commission" throughout the section; and made minor changes in phraseology and punctuation.

References

Faucette v. Christensen, 145 M 28, 400 P 2d 883.

32-2134.1. Injury to or removal of sign or marker as misdemeanor—penalty. Every person who maliciously injures, defaces, damages or removes any sign, signal or marker, either temporarily or permanently erected on the right of way of any secondary, state or interstate highway for warning, instruction or information of the public, is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of two hundred fifty dollars (\$250) or by imprisonment in the county jail for a period not exceeding sixty (60) days, or both such fine and imprisonment in the discretion of the court. This act applies to secondary, state or interstate highways which are completed and to secondary, state or interstate highways which are under construction or repair.

History: En. Sec. 1, Ch. 184, L. 1965.

Title of Act

An act making it unlawful to damage, deface or remove any sign, signal or

marker erected on the right of way of any secondary, state or interstate highway; requiring the state highway commission to post notices hereof; providing for a penalty, reward and a repealing clause.

32-2134.2. Reward for information on injury to or removal of sign or marker. Upon conviction under the provisions of this act, any person who furnishes information to law enforcement officers leading to the arrest and conviction of the accused person shall be paid a reward from the state highway account in the earmarked revenue fund in the sum of one hundred dollars (\$100).

History: En. Sec. 2, Ch. 184, L. 1965.

32-2134.3. Posting of act along highways. The department of highways shall post notices of this act, and the penalties provided for, at locations designated by the department.

History: En. Sec. 3, Ch. 184, L. 1965; amd. Sec. 54, Ch. 316, L. 1974.

for "state highway commission"; and made minor changes in phraseology.

Amendment

The 1974 amendment substituted "department of highways" and "department"

Repealing Clause

Section 4 of Ch. 184, Laws 1965 repealed all acts and parts of acts in conflict therewith.

32-2136. Obedience to and required traffic-control devices.

References

Faucette v. Christensen, 145 M 28, 400 P 2d 883.

32-2137. Traffic-control signal legend. Whenever traffic is controlled by traffic-control signals exhibiting the words "Go," "Caution," or "Stop," or exhibiting different colored lights successively one at a time, or with arrows, the following colors only shall be used and said terms and lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

(a) and (b) * * * [Same as parent volume.]

(c) Red Alone or "Stop":

1. Vehicular traffic facing the signal shall stop before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection and shall remain standing until green or "Go" is shown alone or until a right turn can safely be made and in making such turn vehicular traffic must yield the right of way to pedestrians lawfully within the crosswalk and to other traffic lawfully using the intersection. If a traffic sign legend indicating that no right turn on red may be made after a stop is posted at said intersection, such movement cannot be made until green or "Go" is shown alone.

2. * * * [Same as parent volume.]

(d) * * * [Same as parent volume.]

(e) Traffic Control Signal at Place Other Than Intersection:

1. In the event an official traffic-control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions which by their very nature can have no application.

2. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such sign or marking the stop shall be made at the signal.

History: En. Sec. 34, Ch. 263, L. 1955; amd. Sec. 1, Ch. 211, L. 1963; amd. Sec. 1, Ch. 206, L. 1974.

Amendments

The 1963 amendment inserted a former subdivision (e) deleted by the 1974 amendment.

The 1974 amendment added "or until a right turn * * * is shown alone" to the end of subdivision (c)(1); and deleted former subdivision (e) which read "Red with Traffic Sign Legend—Right Turn on

Red After Stop: 1. Vehicular traffic facing such signal and legend shall stop and then may cautiously enter the intersection only to make the turn indicated by the legend but shall yield the right of way to pedestrians lawfully within the crosswalk and to other traffic lawfully using the intersection. 2. No pedestrian facing such signal and legend shall enter the roadway until the green or 'Go' is shown alone"; and designated former subdivision (f) as (e).

32-2142. Persons under the influence of alcohol or of drugs. (1) In any criminal prosecution for a violation of subsection (2) of this section relating to driving a vehicle while under the influence of alcohol, the amount of alcohol in the defendant's blood at the time alleged, as shown by chemical analysis of the defendant's blood, urine, breath, or other bodily substance, shall give rise to the following presumptions:

(a) If there was at that time 0.05 per cent or less by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was not under the influence of alcohol.

(b) If there was at that time in excess of 0.05 per cent but less than 0.10 per cent by weight of alcohol in the defendant's blood, such fact shall not give rise to any presumption that the defendant was or was not under the influence of alcohol, but such fact may be considered with other competent evidence in determining the guilt or innocence of the defendant.

(c) If there was at that time 0.10 per cent or more by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was under the influence of alcohol.

Per cent by weight of alcohol in the blood shall be based upon grams of alcohol per one hundred (100) cubic centimeters of blood.

The foregoing provisions of this subsection (1) shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether or not the defendant was under the influence of alcohol.

(2) It is unlawful and punishable as provided in subsection (3) of this section for any person who is under the influence of alcohol or any narcotic drug or any other drug to a degree which renders him incapable of safely driving a motor vehicle to drive or be in actual physical control of a motor vehicle within this state. The fact that any person charged with a violation of this subsection is or has been entitled to use such a drug under the laws of this state does not constitute a defense against any charge of violating this subsection.

(3) Every person who is convicted of a violation of this section shall be punished by a fine of not less than \$100 or more than \$500. On a second conviction, he shall be punished by a fine of not less than \$300 or more than \$500. On the third or subsequent conviction, he shall be punished by imprisonment for a term of not less than 30 days or more than 1 year, to which may be added, in the discretion of the court, a fine of not less than \$500 or more than \$1,000. Notwithstanding any provision to the contrary providing for suspension of execution of a sentence imposed under this subsection, the imposition or execution of the first 10 days of the jail sentence imposed for a third or subsequent offense that occurred within 5 years of the first offense may not be deferred or suspended.

(4) Except as otherwise provided in this section, the court may, in its discretion, suspend the execution of any sentence imposed under subsection (3) on the condition that the defendant successfully complete a course in a driver improvement school approved by the court or an alcohol treatment program approved by the department of institutions. Each school or institution providing such education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been accepted by the school or treatment program. If the defendant fails to attend the school or the treatment program, the school or institution shall notify the court of the failure.

(5) Each municipality in this state is given authority to enact subsections (1) through (4) of this section, with the word "state" in the first sentence of subsection (2) changed to read "municipality", as an ordinance and is given jurisdiction of the enforcement of the ordinance and of the imposition of the fines and penalties therein provided.

History: En. Sec. 39, Ch. 263, L. 1955; amd. Sec. 1, Ch. 194, L. 1957; amd. Sec. 3, Ch. 201, L. 1957; amd. Sec. 1, Ch. 109, L. 1961; amd. Sec. 1, Ch. 132, L. 1971; amd. Sec. 1, Ch. 289, L. 1977; amd. Sec. 1, Ch. 430, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 289 and once by Ch. 430. Since the amendments do not ap-

pear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

The 1971 amendment reduced the percentage of alcohol required for presumption of intoxication, as specified in subdivisions 2 and 3 of subsection (b), from .15 per cent to .10 per cent; substituted "grams of alcohol per one hundred (100)

cubic centimeters of blood" at the end of subdivision 4 for "milligrams of alcohol per one hundred (100) milligrams of blood"; and made minor changes in punctuation.

Chapter 289, Laws of 1977, added the last sentence of subsection (d) prohibiting the suspension of the first ten days of a jail sentence imposed for a third or subsequent offense.

Chapter 430, Laws of 1977, deleted subsection (a) as set forth in the parent volume; redesignated former subsections (b) through (d) as subsections (1) through (3); substituted "alcohol" for "intoxicating liquor" throughout the section; inserted "or be in actual physical control of" near the end of the first sentence of subsection (2); deleted "imprisonment in the county or city jail for not more than six (6) months" after "shall be punished by" near the beginning of subsection (3); deleted "imprisonment in the county or city jail for not less than ten (10) days nor more than six (6) months, to which may be added, at the discretion of the court" after "he shall be punished" near the middle of subsection (3); inserted subsection (4); redesignated former subsection (e) as subsection (5); deleted a former subsection (f) which read "The board shall forthwith revoke the license or permit to drive and operating privilege and any nonresident operating privilege of any person upon receiving a record of such person's conviction or forfeiture of bail not vacated under this section"; and made minor changes in phraseology, punctuation and style.

Effective Date

Section 2 of Ch. 132, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 1, 1971.

32-2142.1. Chemical blood, breath, or urine tests. (a) Any person who operates a motor vehicle upon the public highways of this state shall be deemed to have given consent, subject to the provisions of section 32-2142, R. C. M., 1947, to a chemical test of his blood, breath, or urine for the purpose of determining the alcoholic content of his blood if arrested by a peace officer for driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor. The test shall be administered at the direction of a peace officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle upon the public highways of this state while under the influence of intoxicating liquor. The arresting officer may designate which one of the aforesaid tests shall be administered.

(b) Any person who is unconscious or who is otherwise in a condition

Double Jeopardy

Conviction under this section did not bar subsequent prosecution for involuntary manslaughter arising out of the same incident because proof of involuntary manslaughter requires proof of an additional fact. *State v. McDonald*, 158 M 307, 491 P 2d 711.

Improperly Conducted Test

Although it was improper to admit results of blood test showing that deceased's blood contained 0.15% alcohol by weight where testimony disclosed that tube used to collect blood sample had previously contained formalin and formaldehyde which could have resulted in higher than actual alcohol content result, error was not reversible in view of other testimony concerning deceased's state of intoxication. *Benner v. B. F. Goodrich Co.*, 150 M 97, 430 P 2d 648.

Jurisdiction of District Court

While it is generally true that justice courts have jurisdiction over offenses described in this section, since third conviction may lead to sentence of up to one year, prosecution of third offense can be in district court. *State v. Heine*, — M —, 544 P 2d 1212.

Jurisdiction of Justice of Peace

Since the driving of a vehicle on a highway while under the influence of intoxicating liquor is a misdemeanor under this section, it falls within the jurisdiction of a justice of the peace under section 93-410. *Wilson v. Brodie*, 148 M 235, 419 P 2d 306, 308.

Search of Automobile

After a person has been removed from a car and arrested for driving while under the influence, search of the person's automobile is reasonable. *State v. Turner*, — M —, 523 P 2d 1386.

rendering him incapable of refusal, shall be deemed not to have withdrawn the consent provided by paragraph (a) of this section.

(c) If a person under arrest refuses upon the request of a peace officer to submit to a chemical test designated by the arresting officer as provided in paragraph (a) of this section, none shall be given, but the Montana highway patrol board, upon the receipt of a sworn report of the peace officer that he had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle upon the public highways of this state while under the influence of intoxicating liquor and that the person had refused to submit to the test upon the request of the peace officer, shall suspend the license or driving privilege of such person on the highways of this state for a period of sixty (60) days. Like refusal by a nonresident shall be subject to suspension by the board in like manner. All such suspensions are subject to review as hereinafter provided.

History: En. Sec. 1, Ch. 131, L. 1971.

Title of Act

An act to provide for an intoxication test and consent thereto, for persons arrested for driving while under the influence of intoxicating liquor, providing for suspension upon refusal of operator to submit to test, providing for an appeal of license suspension.

Arrest Required

Motion to suppress was properly granted to defendant whose blood alcohol content was determined without his knowl-

edge while he was in the hospital and was not under arrest and was not incapable of refusal. *State v. Mangels*, — M —, 531 P 2d 1313.

Incapable of Refusal

Although defendant was hospitalized after wreck for abrasions and contusions and confusion, he was not incapable of refusal, and evidence of blood alcohol content, taken without his knowledge and without making an arrest, was not admissible. *State v. Mangels*, — M —, 531 P 2d 1313.

32-2142.2. Right of appeal to court. (a) Any person whose license or privilege to drive has been suspended, as hereinbefore authorized, the board shall immediately notify such person in writing and such person shall have the right to file a petition within thirty (30) days thereafter for a hearing in the matter in the district court in the county wherein such person shall reside and such court is hereby vested with jurisdiction and it shall be its duty to set the matter for hearing upon thirty (30) days' written notice to the county attorney of the county wherein the appeal is filed and such county attorney shall represent the state, and thereupon the court shall take testimony and examine into the facts of the case, except that the issues shall be limited to whether a peace officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle upon the public highways while under the influence of intoxicating liquor, whether the person was placed under arrest and whether such person refused to submit to the test. The court shall thereupon determine whether the petitioner is entitled to a license or is subject to suspension as heretofore provided.

(b) Upon the trial of any criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor, evidence of the amount of alcohol in the person's

blood at the time of the act alleged as shown by a chemical analysis of his blood, breath, or urine is admissible.

(c) If the person under arrest refused to submit to the test as hereinabove provided, proof of refusal shall be admissible in any criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a motor vehicle upon the public highways while under the influence of intoxicating liquor.

(d) The provisions of this act do not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of intoxicating liquor.

History: En. Sec. 2, Ch. 131, L. 1971.

32-2142.3. Administration of tests. (a) Only a physician or registered nurse acting at the request of a peace officer may withdraw blood for the purpose of determining the alcoholic content therein. This limitation shall not apply to the taking of breath or urine specimens.

(b) The person tested may, at his own expense, have a physician or registered nurse, of his own choosing administer a test, in addition to any administered at the direction of a peace officer, for the purpose of determining the amount of alcohol in his blood at the time alleged as shown by chemical analysis of his blood, breath or urine. The failure or inability to obtain an additional test by a person shall not preclude the admissibility in evidence of the test taken at the direction of a peace officer.

(c) Upon the request of the person tested full information concerning the test taken at the direction of the peace officer shall be made available to him or his attorney.

(d) No physician or registered nurse shall incur any civil or criminal liability as a result of the proper administering of a blood test when requested in writing by a peace officer to administer such a test.

(e) If the test given under the preceding section is a chemical test of urine, the person tested shall be given such privacy in the taking of the urine specimen as will insure the accuracy of the specimen and, at the same time, maintain the dignity of the individual involved.

(f) The Montana highway patrol board in co-operation with the state board of health or any other appropriate agency, shall adopt uniform standards for the giving of blood alcohol tests and may require certification of training to administer such tests as deemed necessary.

History: En. Sec. 3, Ch. 131, L. 1971.

Separability Clause

Section 4 of Ch. 131, Laws 1971 read "If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given

effect without the invalid provision or application and to this end the provisions of this act are declared to be severable."

Repealing Clause

Section 5 of Ch. 131, Laws 1971 repealed all acts and parts of acts in conflict therewith.

32-2143. Reckless driving. (1) A person commits the offense of reckless driving if he:

(a) operates any vehicle in willful or wanton disregard for the safety of persons or property; or

(b) flees or attempts to flee from or elude a peace officer who is lawfully in pursuit and whose vehicle is at the time in compliance with the requirements of 32-21-132.

(2) A person convicted of reckless driving under subsection (1)(a) shall be punished upon a first conviction by imprisonment for a period of not more than ninety (90) days, or by fine of not less than twenty-five dollars (\$25.00) nor more than three hundred dollars (\$300.00), or by both such fine and imprisonment, and on a second or subsequent conviction shall be punished by imprisonment for not less than ten (10) days nor more than six (6) months, or by a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00), or by both such fine and imprisonment.

(3) A person convicted of reckless driving under subsection (1)(b) shall be punished by imprisonment in the county or city jail for not less than 10 days or more than 6 months to which may be added at the discretion of the court a fine of not less than \$300 or more than \$500. On a second or subsequent conviction, he shall be punished by imprisonment for a term of not less than 30 days or more than 1 year to which may be added at the discretion of the court a fine of not less than \$500 or more than \$1,000.

(4) Each municipality in this state may enact and enforce subsections (1) through (3) of this section as an ordinance.

History: En. Sec. 40, Ch. 263, L. 1955; amd. Sec. 4, Ch. 201, L. 1957; amd. Sec. 1, Ch. 287, L. 1977.

Amendments

The 1977 amendment redesignated former subsection (a) as subsection (1) and inserted subdivision designation (1)(a); inserted subdivision (1)(b); redesignated

former subsection (b) as subsection (2); inserted subsection (3); redesignated former subsection (c) as subsection (4); deleted "and is hereby given jurisdiction of the enforcement of said ordinance and of the imposition of the fines and penalties therein provided" from the end of subsection (4); and made minor changes in phraseology.

32-2143.1. Permission of authorities to hold speed contest. No race or contest for speed shall be held and no person shall engage in or aid or abet in any motor vehicle speed contest or exhibition of speed on a public highway or street without written permission of the authorities of the state, county or city having jurisdiction and unless the same is fully and efficiently patrolled for the entire distance over which such race or contest for speed is to be held.

History: En. Sec. 1, Ch. 100, L. 1967.

Title of Act

An act prohibiting speed contests and "drag racing" on the public highways or streets unless written permission is granted by the authorities having jurisdiction over such highways or streets; fixing penalty for violation of act.

Negligence Per Se

Violation of this section was negligence as a matter of law. *Roberts v. Burlington Northern R. Co., Inc.*, — M —, 556 P 2d 1243.

32-2143.2. Penalty for unauthorized drag racing. Any person convicted for violation of this act shall be guilty of a misdemeanor and shall be

punished by a fine of not less than fifty dollars (\$50) or more than five hundred dollars (\$500) or by imprisonment in the county or city jail for not more than six (6) months, or by both such fine and imprisonment.

History: En. Sec. 2, Ch. 100, L. 1967.

32-2143.3. Careless driving. A person operating or driving a vehicle of any character on a public highway of this state shall drive it in a careful and prudent manner so as not to unduly or unreasonably endanger the life, limb, property, or other rights of a person entitled to the use of the street or highway.

History: En. 32-2143.3 by Sec. 1, Ch. 294, L. 1977.

Title of Act

An act to define the offense of careless driving and to make it punishable as provided in section 32-21-157, R. C. M. 1947.

32-2143.4. Penalty. A person violating the provisions of 32-2143.3 is guilty of the offense of careless driving and shall be punishable as provided in 32-21-157.

History: En. 32-2143.4 by Sec. 2, Ch. 294, L. 1977.

32-2144. Speed restrictions—basic rule. (a) A person operating or driving a vehicle of any character on a public highway of this state shall drive it in a careful and prudent manner, and at a rate of speed no greater than is reasonable and proper under the conditions existing at the point of operation, taking into account the amount and character of traffic, condition of brakes, weight of vehicle, grade and width of highway, condition of surface, and freedom of obstruction to view ahead, and he shall drive it so as not to unduly or unreasonably endanger the life, limb, property, or other rights of a person entitled to the use of the street or highway.

(b) Where no special hazard exists that requires lower speed for compliance with paragraph (a) of this section, the speed of a vehicle not in excess of the limits specified in this section or established as authorized in sections 32-2145, 32-2146, 32-2147, and 32-2149 is lawful, but a speed in excess of those limits is unlawful:

1. Twenty-five (25) miles per hour in an urban district;
2. Thirty-five (35) miles per hour on a highway under construction or repair;
3. Fifty-five (55) miles per hour in other locations during the nighttime, except that the nighttime speed limit on completed sections of interstate highways is sixty-five (65) miles per hour.

“Daytime” means from a half ($\frac{1}{2}$) hour before sunrise to a half ($\frac{1}{2}$) hour after sunset. “Nighttime” means at any other hour.

The speed limits set forth in this section may be altered by the highway commission as authorized in sections 32-2145, 32-2146, and 32-2149.

(c) The driver of a vehicle shall, consistent with paragraph (a), drive at an appropriate reduced speed when approaching and crossing an intersection or railway grade crossing, when approaching and going

around a curve, when approaching a hill crest, when traveling upon a narrow or winding roadway, and when a special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway condition.

History: En. Sec. 41, Ch. 263, L. 1955; amd. Sec. 1, Ch. 190, L. 1967; amd. Sec. 55, Ch. 316, L. 1974.

Amendments

The 1967 amendment added the exception concerning interstate highways at the end of the first paragraph of subdivision 3 of subsection (b).

The 1974 amendment substituted "as authorized in sections 32-2145, 32-2146, 32-2147, and 32-2149" in subsection (b) for "as hereinafter authorized"; deleted "however, the Montana highway commission shall have the authority to establish reduced night speed limits on curves and other dangerous locations as set forth in section 32-2145, R. C. M. 1947" from subdivision (b)(3); inserted "by the highway commission" after "may be altered" in the last paragraph of subdivision (b)(3); added "and 32-2149" to the end of the last paragraph in subdivision (b)(3); and made minor changes in phraseology and punctuation.

Assured Clear Distance

Operator of disabled vehicle stalled on

the highway was not bound to foresee or anticipate that other vehicles approaching the scene would come over the crest of a hill too fast to stop within their assured clear distance ahead, and in an action by persons injured in resulting collision, trial court should have directed verdict for defendant owner of the disabled vehicle on the ground of independent intervening cause. *Halsey v. Uithof*, — M —, 532 P 2d 686.

Ordinary Negligence

This section refers to ordinary, prudent driving standards, and therefore is a standard for ordinary negligence and not gross negligence required for recovery by guest in action against driver. *Hoffman v. Herzog*, 158 M 296, 491 P 2d 713.

Snow Conditions

Mere showing of a collision killing a horse in open range country, an icy road condition and existence of uninterpreted skid marks failed to show violation of subdivision (a) of this section. *Fries v. Shaughnessy*, 159 M 307, 496 P 2d 1159.

32-2144.1. Declaration of speed limits—exception to the basic rule. The attorney general shall declare by proclamation filed with the secretary of state a speed limit for all motor vehicles on all public streets and highways in the state whenever the establishment of such a speed limit by the state is required by federal law as a condition to the state's continuing eligibility to receive funds authorized by the Federal Aid Highway Act of 1973 and all acts amendatory thereto or any other federal statute. Such speed limit may not be less than that required by federal law, and the attorney general shall by further proclamation, change the speed limit adopted pursuant to this act to comply with federal law. Any proclamation issued pursuant to this act becomes effective at midnight of the day upon which it is filed with the secretary of state. A speed limit imposed pursuant to this act is an exception to the basic rule requirements of section 32-2144 and a speed in excess of the speed limit established pursuant to this act is unlawful notwithstanding any provision of that section.

History: En. 32-2144.1 by Sec. 1, Ch. 60, L. 1974.

Compiler's Notes

Section 1 of Ch. 122, Laws 1977 amended this section to read: "Conservation speed limits—exception to the basic rule. To assist in the conservation of valuable and scarce motor fuel resources while providing for the safe and convenient flow

of traffic, no person may operate a motor vehicle in excess of 65 miles per hour on a public highway in this state unless otherwise limited under 32-2144. The speed limit imposed pursuant to this act is an exception to the basic rule requirements of section 32-2144 and a speed in excess of the speed limit established pursuant to this act is unlawful notwithstanding any provision of that section."

Section 3 of Ch. 122, Laws 1977 read "Effective date. The governor may issue a declaration implementing the provisions of this act when such implementation will not jeopardize the state's continued eligibility to receive funds authorized by the Federal Highways Act. This act is effective upon the issuing of the declaration of implementation."

Title of Act

An act directing the attorney general to declare by order a speed limit as required by federal law on all public streets and highways in the state except in those areas where a speed limit lower than that required by federal law is presently applicable; and providing an effective date.

32-2144.2. Not applicable to certain streets and highways. The provisions of this act shall not apply to those public streets and highways for which a speed limit lower than that required by federal law was applicable on the effective date of this act under any other state, county, municipal or other local law, ordinance, regulation or order.

History: En. 32-2144.2 by Sec. 2, Ch. 60, L. 1974.

32-2144.3. Termination of declaration. The attorney general shall terminate by proclamation any speed limit proclaimed under this act whenever such a speed limit is no longer required by federal law as a condition to the state's continuing eligibility to receive funds authorized by the Federal Aid Highway Act of 1973 and all acts amendatory thereto or from any other federal statute.

History: En. 32-2144.3 by Sec. 3, Ch. 60, L. 1974.

Compiler's Notes

Section 2 of Ch. 122, Laws 1977 repealed this section. Section 3 of the act provided a contingent effective date which is printed in the note following 32-2144.1.

32-2144.4. Subject to Administrative Procedure Act. The establishment of a speed limit pursuant to section 1 of this act [32-2144.1] shall not be subject to the provisions and requirements of the Montana Administrative Procedure Act, section 82-4201, R. C. M. 1947, et seq.

History: En. 32-2144.4 by Sec. 4, Ch. 60, L. 1974.

Compiler's Notes

Section 2 of Ch. 122, Laws 1977 repealed this section. Section 3 of the act provided a contingent effective date which is printed in the note following 32-2144.1.

32-2144.5. Lower speed limits. Nothing in this act shall prohibit any state, county, municipal or other local official, board, or body which has authority to enact laws relating to motor vehicle speed limits from establishing speed limits lower than that required by federal law on any public streets or highways as permitted by law on the effective date of this act.

History: En. 32-2144.5 by Sec. 5, Ch. 60, L. 1974.

32-2144.6. Enforcement. (1) A person violating the speed limit imposed pursuant to section 32-2144.1 is guilty of the offense of unnecessary waste of a resource currently in short supply and upon conviction shall be fined five dollars (\$5) and no jail sentence may be imposed. Bond for this offense shall be five dollars (\$5).

For the purpose of this section only, the fees of the justice court shall be four dollars (\$4) to be remitted as set forth in section 25-311.

(2) No violation of this act shall be recorded or charged against the driver's record of a person convicted of violating this act and no insurance company shall hold a violation of this act against the insured and there shall be no increase in premiums due to a violation of this act.

History: En. 32-2144.6 by Sec. 6, Ch. 60, L. 1974; amd. Sec. 1, Ch. 248, L. 1974; amd. Sec. 1, Ch. 6, L. 1975.

Compiler's Notes

Section 6 of Ch. 60, Laws 1974, contained a subsection (2) which was deleted by Sec. 1, Ch. 248, Laws 1974. The subsection was added by the 1975 amendment.

Amendments

Chapter 248, Laws 1974, inserted "[32-2144.1]" in the first sentence of subsection (1); added the second paragraph of subsection (1); and deleted a subsection (2). See Compiler's Notes and 1975 amendment note.

The 1975 amendment substituted "section 32-2144.1" near the beginning of the section for "section 1 of this act [32-2144.1]"; substituted "shall be fined five dollars (\$5)" for "shall be fined not to exceed five dollars (\$5)" in subsection (1); substituted "this section" for "this act" in the second paragraph of subsection (1); added subsection (2), as deleted by chapter 248, Laws of 1974; and made minor changes in phraseology and style.

Effective Date

Section 2 of Ch. 248, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 21, 1974.

32-2144.7. Existing statutes not affected. This act in no way affects traffic control statutes and violation of existing statutes shall be prosecuted solely as provided therein.

History: En. 32-2144.7 by Sec. 7, Ch. 60, 1974.

Effective Date

Section 8 of Ch. 60, Laws 1974 pro-

vided the act should be in effect from and after its passage and approval. Approved March 2, 1974.

32-2145. Establishment of special speed zones. (1) If the department of highways determines upon the basis of an engineering and traffic investigation that a speed limit set by section 32-2144 is greater or less than is reasonable or safe under the conditions found to exist at an intersection, curve, dangerous location, or any other part of a highway under its jurisdiction, the commission may set a reasonable and safe special speed limit at that part.

(2) The department shall erect and maintain appropriate signs giving notice of these special limits. When they are erected, the limits are effective at that part at all times, or at other times the commission sets.

(3) The authority of the commission under this section includes the authority to set reduced nighttime speed limits on curves and other dangerous locations.

(4) This section does not authorize the commission to set a statewide speed limit.

History: En. Sec. 42, Ch. 263, L. 1955; amd. Sec. 1, Ch. 204, L. 1959; amd. Sec. 1, Ch. 178, L. 1961; amd. Sec. 56, Ch. 316, L. 1974.

Amendments

The 1974 amendment rewrote this section. For prior version, see parent volume.

32-2146. When local authorities may and shall alter limits. (a) If a local authority in its jurisdiction determines on the basis of an engineer-

ing and traffic investigation that the speed permitted under this act is greater or less than is reasonable and safe under the conditions found to exist upon a highway or part of a highway, the local authority may set a reasonable and safe limit thereon which:

1. Decreases the limit at intersection; or
2. Increases the limit within an urban district, but not to more than fifty-five (55) miles per hour during the nighttime; or
3. Decreases the limit outside an urban district, but not to less than thirty-five (35) miles per hour.

(b) A local authority in its jurisdiction shall determine by an engineering and traffic investigation the proper speed for all arterial streets and shall set a reasonable and safe limit thereon which may be greater or less than the speed permitted under this act for an urban district.

(c) An altered limit established as authorized under this section is effective at all times or at other times determined by the authority when appropriate signs giving notice of the altered limit are erected upon the highway.

(d) The commission has exclusive jurisdiction to set special speed limits on all federal-aid highways or extensions thereof in all municipalities or urban areas. The commission shall set these limits in accordance with section 32-2145.

History: En. Sec. 43, Ch. 263, L. 1955; amd. Sec. 1, Ch. 89, L. 1971; amd. Sec. 57, Ch. 316, L. 1974.

Amendments

The 1971 amendment substituted a new subsection (d) for a subsection reading "Any alteration of speed limits on state highways or extensions thereof in a municipality by local authorities shall not

be effective until such alteration has been approved by the commission."

The 1974 amendment deleted "or during hours of darkness" after "at all times" in subsection (c); inserted "by the authority" after "determined" in subsection (c); substituted reference to section 32-2145 in subsection (d) for reference to section 32-2144; and made minor changes in phraseology and punctuation.

32-2147. Minimum speed regulations. (a) A person may not drive a motor vehicle at a speed slow enough to impede or block the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law.

On a two-lane highway where passing is unsafe because of traffic in the opposite direction or other conditions, a slow-moving vehicle, including a passenger vehicle, behind which four (4) or more vehicles are formed in line, shall turn off the roadway at the nearest place designated as a turnout by signs erected by the authority having jurisdiction over the highway, or wherever sufficient area for a safe turnout exists, in order to permit the vehicles following it to proceed. As used in this section a slow-moving vehicle is one which is proceeding at a rate of speed less than the normal flow of traffic at the particular time and place. The department of highways is authorized to designate and construct such turnouts and to erect signs at appropriate places advising motorists of this statute.

(b) If the department of highways or local authorities within their respective jurisdictions determine on the basis of an engineering and traffic investigation that slow speeds on any part of a highway consistent-

ly impede the normal and reasonable movement of traffic, the commission or the local authority may set a minimum speed limit below which a person may not drive a vehicle except when necessary for safe operation or in compliance with law.

History: En. Sec. 44, Ch. 263, L. 1955; amd. Sec. 1, Ch. 387, L. 1973; amd. Sec. 58, Ch. 316, L. 1974.

Amendments

The 1973 amendment deleted from subsection (a) a second paragraph relating to police directions to slow drivers; and added the present second and third paragraphs to subsection (a).

The 1974 amendment substituted "department of highways" for "board" at the beginning of subsection (b); substituted "commission" for "board" near the middle of subsection (b); and made minor changes in phraseology.

Effective Date

Section 2 of Ch. 387, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 20, 1973.

Instructions

Where plaintiff's son was killed when car in which he was riding struck rear of defendant's truck which had just turned onto highway, it was reversible error for court to instruct jury on slow speed statute (this section) without requiring that plaintiff show truck had been on road sufficient time to attain a normal speed. *Hageman v. Townsend*, 144 M 510, 398 P 2d 612.

Purpose

The purpose of this section is rooted in the recognition that the slow driver may be the cause of fatal highway accidents as well as the fast driver. *Hageman v. Townsend*, 144 M 510, 398 P 2d 612.

32-2148. Special speed limitations on trucks, truck-tractors, motor-driven cycles and vehicles towing house trailers. (a) No person shall operate any truck or truck-tractor the gross weight of which exceeds eight thousand (8,000) pounds at a speed greater than sixty-five (65) miles per hour on those completed sections of interstate and four-lane divided highways, and sixty (60) miles per hour on those completed sections of primary and secondary highways; provided, however, that truck nighttime speed limit shall not exceed that of automobiles as stated in section 32-2144, R. C. M. 1947.

(b) and (c) * * * [Same as parent volume.]

History: En. Sec. 45, Ch. 263, L. 1955; amd. Sec. 1, Ch. 241, L. 1957; amd. Sec. 1, Ch. 119, L. 1961; amd. Sec. 1, Ch. 253, L. 1971.

Amendments

The 1971 amendment substituted "sixty-five (65) miles per hour * * * as stated in section 32-2144, R. C. M. 1947" for "fifty (50) miles per hour" at the end of subsection (a).

32-2149. Special speed limitations. (a) A person may not drive a vehicle equipped with solid rubber or cushion tires at a speed greater than ten (10) miles per hour.

(b) A person may not drive a vehicle over a bridge or other elevated structure constituting a part of a highway at a speed which is greater than the maximum speed which can be maintained with safety to the bridge or structure, when the structure is signposted as provided in this section.

(c) The department of highways upon request from a local authority may, or upon its own initiative shall, conduct an investigation of a bridge or other elevated structure constituting a part of a highway, and if it finds on investigation that the structure cannot safely withstand vehicles

traveling at the speed otherwise permissible under this act, the commission shall set the maximum speed of vehicles which the structure can withstand, and the department shall erect and maintain suitable signs stating the maximum speed at a distance of not less than one hundred (100) feet before each end of the structure.

(d) Upon the trial of a person charged with a violation of this section, proof of the setting of the maximum speed by the commission and the existence of the signs is conclusive evidence of the maximum speed which can be maintained with safety to the bridge or structure.

History: En. Sec. 46, Ch. 263, L. 1955; amd. Sec. 59, Ch. 316, L. 1974.

Amendments

The 1974 amendment substituted "department of highways" for "board" at the beginning of subsection (c); substituted

"commission" for "board" before "shall set" in subsection (c) and in subsection (d); inserted "department" before "shall erect and maintain" in subsection (c); and made minor changes in phraseology and punctuation.

32-2150.3. Erection of signs. (a) No operator of a motor vehicle may be arrested under this act unless signs have been placed at or near the state line on the primary highway system, outside towns or cities having over two thousand five hundred (2,500) population, and outside county seats on the primary highways to indicate the legal rate of speed.

(b) * * * [Same as parent volume.]

(c) Signs giving notice that the speed of vehicles may be measured by radiomicro waves or other electrical device shall be placed as required for speed signs in subsection (a) above, provided, however, that the absence of such signs shall not, in itself, invalidate an otherwise proper arrest.

History: En. Sec. 3, Ch. 120, L. 1959; amd. Sec. 1, Ch. 205, L. 1974.

Amendments

The 1974 amendment deleted "radar" before "signs" in the caption; deleted "and

that the speed of vehicles may be measured by radiomicro waves or other electrical device" from the end of subsection (a) after "legal rate of speed"; and added subsection (c).

32-2151. Drive on right side of roadway—exceptions.

Application

Defendant's proposed instruction in automobile accident case placing duty upon plaintiff to drive on right side of roadway at all times and under all conditions, and which made plaintiff absolutely negligent as matter of law if she failed to do so, was not entirely correct statement of law and therefore properly refused since this section and section 32-2153 provide exceptions to rule that one must drive upon right side of roadway. *Lamb v. Page*, 153 M 171, 455 P 2d 337.

Backing over Center-line

Where the evidence conclusively established that defendant's tractor-trailer was backed over the highway center-line into decedent's traffic lane, defendant's driver was negligent as a matter of law. *Hurly v. Star Transfer Co.*, 141 M 176, 376 P 2d 504, 507.

References

Williams v. Wallace, 143 M 11, 386 P 2d 744.

32-2152. Passing vehicles proceeding in opposite directions.

Assumption of Risk

Plaintiff who was legally attempting to pass a logging truck in a clear passing lane with no oncoming traffic and who could not anticipate that the truck would turn left, did not assume any risk. *Beebe v. Johnson*, — M —, 526 P 2d 128.

References

Cited in *Hurly v. Star Transfer Co.*, 141 M 176, 376 P 2d 504, 507; *Williams v. Wallace*, 143 M 11, 386 P 2d 744.

32-2153. Overtaking a vehicle on the left.**Audible Signal**

Finding of contributory negligence was proper under the "but for" test, since driver making left turn might have been warned in time "but for" the failure of the plaintiff to sound his horn sufficiently in advance of passing. *Sedlacek v. Ahrens*, — M —, 530 P 2d 424.

Duty of Overtaking Vehicle

Undisputed evidence that defendant waited until he was 20 to 25 feet behind

plaintiff's vehicle, which was traveling at 55 m.p.h., before moving to the left to pass on an interstate with divided lanes and a clear passing lane, showed that defendant was negligent in following too closely under the conditions, and summary judgment for plaintiff on issue of liability was proper even though there was evidence that defendant's power steering failed when he tried to move to left. *Farris v. Clark*, 158 M 33, 487 P 2d 1307.

32-2156. Further limitations on driving to left of center, etc.**Contributory Negligence**

Plaintiff driving to the left side of the roadway while within one hundred feet of or traversing an intersection in attempting to pass truck was guilty of contributory negligence in collision with truck attempting to make a left turn. *Rader v. Nicholls*, 140 M 459, 373 P 2d 312, 313, distinguished in 145 M 28, 400 P 2d 883; — M —, 552 P 2d 1102.

Where plaintiff attempted to pass defendant's truck 250 feet from unmarked intersection, and was struck by defendant's truck as it started to make a left-hand turn, in reconciling this section with section 32-2133, which provides for a uniform system of traffic control devices, it was not error on the judge's part to refuse to instruct the jury on the provisions of this section. *Graveley v. Springer*, 145 M 486, 402 P 2d 41.

Intersection

An intersection is formed when two publicly maintained ways join at any angle. *Rader v. Nicholls*, 140 M 459, 373 P 2d 312, 313, distinguished in 145 M 28, 400 P 2d 883; — M —, 552 P 2d 883.

Left Turn

Prohibition of driving on left side of highway does not apply to vehicle making left turn, and where the issue before the jury was negligence in turning, jury instructions setting forth the requirements of this statute were prejudicial. *Rude v. Neal*, — M —, 530 P 2d 428.

Reliance on Markings

Defendant, who attempted to pass plaintiff's truck within one hundred feet of intersection, in violation of this section, was not negligent per se, since defendant was entitled to rely on the broken white center line, which indicated that passing could be done lawfully at the point where the accident occurred. *Faucette v. Christensen*, 145 M 28, 400 P 2d 883, distinguished in 159 M 461, 498 P 2d 1204, 1206.

Notwithstanding the prohibition of this section against passing within 100 feet of an intersection or railroad grade crossing, defendant, who struck a left-turning automobile within 100 feet of an unmarked intersection, was entitled to rely on the highway markings indicating that the area was a passing zone, and therefore was not negligent per se. *Dzikowski v. Jacobs*, — M —, 552 P 2d 1102.

Turning Vehicle

Plaintiff traveling at slow rate of speed on highway and indicating left turn with automatic signal, then turning left onto country road, was exercising proper care in turning, and driver, who struck plaintiff while attempting to pass while plaintiff was turning was negligent and proximate cause of accident, even though area may not have been an intersection within the meaning of this section and even though highway markings did not prohibit passing. *Gammel v. Dees*, 159 M 461, 498 P 2d 1204, distinguished in — M —, 552 P 2d 883.

32-2157. No-passing zones. (a) The department of highways may determine those portions of a highway where overtaking and passing or driving to the left of the roadway would be especially hazardous, and it may by appropriate signs or markings on the roadway indicate the beginning and end of these zones. When the signs or markings are in place and clearly visible to an ordinarily observant person, every driver of a vehicle shall obey the directions of those signs.

(b) Where signs or markings are in place to define a no-passing zone as set forth in paragraph (a) a driver may not drive on the left side of the

roadway within the no-passing zone or on the left side of a pavement striping designed to mark the no-passing zone throughout its length.

History: En. Sec. 54, Ch. 263, L. 1955; amd. Sec. 1, Ch. 97, L. 1957; amd. Sec. 60, Ch. 316, L. 1974.

Amendments

The 1974 amendment substituted "department of highways" for "commission" in subsection (a); and made minor changes in phraseology.

Duty of Other Driver

This section does not absolve a driver intending to turn left from the obligation under section 32-2167 of making certain that the turn can be made with reasonable safety so that plaintiff was contributorily negligent in failing to look to the rear before turning even though defendant was passing him in a no-passing zone. *Bellon v. Heinzig*, 347 F 2d 4.

32-2158. One-way roadways and rotary traffic islands. (a) The department of highways may designate a highway or a separate roadway under its jurisdiction for one-way traffic and shall erect appropriate signs giving notice of that designation.

(b) Upon a roadway designated and signposted for one-way traffic a vehicle may be driven only in the direction designated.

(c) A vehicle passing around a rotary traffic island may be driven only to the right of such island.

History: En. Sec. 55, Ch. 263, L. 1955; amd. Sec. 61, Ch. 316, L. 1974.

Amendments

The 1974 amendment substituted "department of highways" for "commission" in subsection (a); and made minor changes in phraseology.

32-2159. Driving on roadways laned for traffic.

Backing over Center-line

Where the evidence conclusively established that defendant's tractor-trailer was backed over the highway center-line into

decendent's traffic lane, defendant's driver was negligent as a matter of law. *Hurly v. Star Transfer Co.*, 141 M 176, 376 P 2d 504, 507.

32-2160. Following too closely.

Preparing to Overtake

Undisputed evidence that defendant, rapidly approaching from behind, waited until he was 20 to 25 feet from plaintiff's vehicle, which was traveling at 55 m.p.h., before moving to the left to pass on an interstate with divided lanes and a clear passing lane, showed that defendant was

negligent in following too closely under the conditions, and summary judgment for plaintiff on issue of liability was proper even though there was evidence that defendant's power steering failed when he tried to move to left. *Farris v. Clark*, 158 M 33, 487 P 2d 1307.

32-2163. Restrictions on use of controlled access roadway. (1) The department of highways may by rule and local authorities may by ordinance prohibit the use of a controlled access highway under their respective jurisdictions by pedestrians, bicycles or other nonmotorized traffic or by a person operating a motor-driven cycle.

(2) The department or the local authority which adopts the prohibitory regulation shall erect and maintain official signs on the controlled access roadway on which these regulations are applicable. It is unlawful for a person to violate the restrictions stated on those signs.

History: En. Sec. 60, Ch. 263, L. 1955; amd. Sec. 62, Ch. 316, L. 1974.

Amendments

The 1974 amendment rewrote subsec-

tion (1) (for prior version, see parent volume); substituted "department" for "commission" in subsection (2); and made

minor changes in phraseology, punctuation and style.

32-2166. Starting parked vehicle.

Four Way Stops

The vehicle approaching from the right that would otherwise have the right of way loses the preference on approaching a four way stop because it is required to stop; where two drivers approached a four way stop, neither had a statutory right of way or "preferred" or "favored" driver status and both were required to exercise ordinary care as they proceeded into or through the intersection. *Elliott v. Hansen*, — M —, 519 P 2d 411.

"Preferred" Driver Status

Where two vehicles collided at four-way stop, one vehicle traveling south to north and other vehicle traveling east to west, both drivers had duty to make full stop before entering intersection and to exercise ordinary care to determine whether it was safe to proceed through intersection, but neither driver had "preferred" driver status. *Elliott v. Hansen*, — M —, 519 P 2d 411.

32-2167. Turning movements and required signals.

Duty To Look to Rear

Since there is no exception to this section for unlawful passing, plaintiff had the affirmative duty to look to the rear, as well as forward, and was contributorily negligent in not looking to the rear before making a left-hand turn, since he could not rely on the presumption that he would not be passed in a no-passing zone. *Belton v. Heinzig*, 347 F 2d 4.

Conflicting testimony as to whether or not the driver of a truck looked to the rear before making a left turn, and as to whether or not his turn-signal lights were operating was a question for the jury to decide, and they could have properly concluded from the evidence that the plaintiff's car was in the passing lane prior to the time the defendant's truck turned left across the center line. *Beebe v. Johnson*, — M —, 526 P 2d 128.

Knowledge of Safety Not Required

This section requires that a person making a turning movement take reasonable precautions under the circumstances, but it does not require that such person know with absolute certainty that the turning movement can be made with safety. *Holland v. Konda*, 142 M 536, 385 P 2d 272, 6 ALR 3d 824.

Passing Laws Not Applicable

In action for negligence in making left turn near the crest of a hill, it was error to instruct jury on inapplicable laws prohibiting anyone from driving on left side of road, especially when the instruction was combined with an instruction that statutory violations are negligence as a matter of law. *Rude v. Neal*, — M —, 530 P 2d 428.

32-2170. Vehicle approaching or entering intersection. (a) When two (2) vehicles enter or approach an intersection from different highways at approximately the same time, the driver of the vehicle on the left shall yield the right of way to the vehicle on the right.

(b) The right of way rule declared in paragraph (a) is modified at through highways and otherwise as hereinafter stated in this article.

History: En. Sec. 67, Ch. 263, L. 1955; amd. Sec. 1, Ch. 175, L. 1965.

Amendments

The 1965 amendment deleted a former paragraph (a), for text of which see parent volume; appropriately redesignated the remaining paragraphs; inserted "or approach" after "enter" near the beginning of present paragraph (a); and deleted from present paragraph (b) a reference to former paragraph (a).

Repealing Clause

Section 2 of Ch. 175, Laws 1965 re-

pealed all acts and parts of acts in conflict therewith.

Four Way Stops

The vehicle approaching from the right that would otherwise have the right of way loses the preference on approaching a four way stop because it is required to stop; where two drivers approached a four way stop, neither had a statutory right of way or "preferred" or "favored" driver status and both were required to exercise ordinary care as they proceeded into or through the intersection. *Elliott v. Hansen*, — M —, 519 P 2d 411.

"Preferred" Driver Status

Where two vehicles collided at four-way stop, one vehicle traveling south to north and other vehicle traveling east to west, both drivers had duty to make full stop before entering intersection and to

exercise ordinary care to determine whether it was safe to proceed through intersection, but neither driver had "preferred" driver status. *Elliott v. Hansen*, — M —, 519 P 2d 411.

32-2171. Vehicle turning left at intersection.**Additional Duties**

This section does not purport to catalogue all the rights and duties of a driver intending to turn left and does not negative the existence of an additional duty to maintain a proper lookout for vehicles approaching from the rear, even where

plaintiff was making a left turn in a no-passing zone. *Bellon v. Heinzig*, 347 F 2d 4.

References

United States v. Clark, 247 F Supp 958.

32-2172. Vehicle entering through highway or stop intersection.**Four Way Stops**

The vehicle approaching from the right that would otherwise have the right of way loses the preference on approaching a four way stop because it is required to stop; where two drivers approached a four way stop, neither had a statutory right of way or "preferred" or "favored" driver status and both were required to exercise ordinary care as they proceeded into or through the intersection. *Elliott v. Hansen*, — M —, 519 P 2d 411.

"Preferred" Driver Status

Where two vehicles collided at four-way stop, one vehicle traveling south to north and other vehicle traveling east to west, both drivers had duty to make full stop before entering intersection and to exercise ordinary care to determine whether it was safe to proceed through intersection, but neither driver had "preferred" driver status. *Elliott v. Hansen*, — M —, 519 P 2d 411.

32-2173. Vehicle entering highway from private road, driveway or public approach ramp. The driver of a vehicle about to enter or cross a highway from a private road, driveway or public approach ramp shall yield the right of way to all vehicles approaching on said highway.

History: En. Sec. 70, Ch. 263, L. 1955; amd. Sec. 1, Ch. 52, L. 1965.

Amendment

The 1965 amendment inserted "or public approach ramp."

Public Approach Ramp

Exit on state right of way from gravel road intersecting paved frontage road to interstate highway was public approach ramp within meaning of this section. *Pachek v. Norton Concrete Co.*, 160 M 16, 499 P 2d 766.

32-2174. Vehicles approaching "Yield" sign. When the intersection is designated by the department of highways, or the local authority having jurisdiction, as a "Yield" intersection, the driver of a vehicle approaching the "Yield" sign shall slow to a speed of not more than fifteen (15) miles per hour and yield right of way to all vehicles approaching from the right or left on the intersecting roads, or streets, which are so close as to constitute an immediate hazard. If a driver is involved in a collision at an intersection or interferes with the movement of other vehicles after driving past a "Yield" sign, such collision or interference shall be deemed evidence of the driver's failure to yield right of way.

History: En. Sec. 71, Ch. 263, L. 1955; amd. Sec. 1, Ch. 96, L. 1963; amd. Sec. 63, Ch. 316, L. 1974.

Amendments

The 1963 amendment deleted "Right of

Way" following "Yield" within the quotation marks in three places.

The 1974 amendment substituted "department of highways" for "commission" in the first sentence.

Effective Date

Section 2 of Ch. 96, Laws 1963 provided the act should be in effect after its passage

and approval. Approved February 28, 1963.

32-2175. Operation of vehicles on approach of police vehicles or authorized emergency vehicles. (a) Upon the immediate approach of an authorized emergency vehicle making use of audible and visual signals meeting the requirements of section 32-21-132, or of a police vehicle properly and lawfully making use of an audible signal only, the driver of every other vehicle shall yield the right of way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in such position until the police vehicle or authorized emergency vehicle has passed, except when otherwise directed by a police officer or highway patrolman.

(b) This section shall not operate to relieve the driver of a police vehicle or authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway.

History: En. Sec. 72, Ch. 263, L. 1955;

amd. Sec. 4, Ch. 169, L. 1957; amd. Sec. 3, Ch. 153, L. 1975.

Amendments

The 1975 amendment inserted "police vehicle or" before "authorized emergency vehicle" in two places.

32-2177. Pedestrians' right of way in crosswalk. (a) and (b). * * * [Same as parent volume.]

(c) It is unlawful for any person to drive a motor vehicle through a column of school children crossing a street or highway or past a member of the school safety patrol while the member of the school safety patrol is directing the movement of children across a street or highway and while the school safety patrol member is holding his official signal in the stop position.

History: En. Sec. 74, Ch. 263, L. 1955; amd. Sec. 1, Ch. 54, L. 1965.

all acts and parts of acts in conflict therewith.

Amendment

The 1965 amendment added subsection (c).

Effective Date

Section 3 of Ch. 54, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 25, 1965.

Repealing Clause

Section 2 of Ch. 54, Laws 1965 repealed

32-2178. Crossing at other than crosswalks.

Standard of Care Required of Child

Since a lesser standard of care is required of children, contributory negligence will not be presumed as a matter

of law for an eight-year-old boy who was struck by a car while he was running across the street. *Ranard v. O'Neil*, — M —, 531 P 2d 1000.

32-2188. Riding on roadways and bicycle paths. (a) * * * [Same as parent volume.]

(b) Persons riding bicycles upon a roadway shall ride in single file except on paths or parts of roadways set aside for the exclusive use of bicycles. A person riding a bicycle may overtake and pass another bicycle when safe to do so and when other traffic is not obstructed by so doing.

(c) * * * [Same as parent volume.]

History: En. Sec. 85, Ch. 263, L. 1955;
amd. Sec. 1, Ch. 110, L. 1975.

Amendments

The 1975 amendment substituted "shall

ride in single file" for "shall not ride more than two (2) abreast" in the first sentence of subsection (b); and added the second sentence of subsection (b).

32-2190. Lamps and other equipment on bicycles. (a) Every bicycle when in use at nighttime shall be equipped with a lamp on the front which shall emit a white light visible from a distance of at least five hundred (500) feet to the front. A lamp emitting a red light visible from a distance of five hundred (500) feet to the rear may be used in addition to rear-facing reflectors required by this section.

(b) Every bicycle when in use at nighttime shall be equipped with an essentially colorless front facing reflector, essentially colorless or amber pedal reflectors, and a red rear-facing reflector. Pedal reflectors shall be mounted on the front and back of each pedal.

(c) Every bicycle when in use at nighttime shall be equipped with either tires with retroflective sidewalls or reflectors mounted on the spokes of each wheel. Spoke mounted reflectors shall be within 76 mm. (3.0 in.) of the inside of the rim and shall be visible on each side of the wheel. The reflectors on the front wheel shall be essentially colorless or amber and the reflectors on the rear wheel shall be amber or red.

(d) Reflectors required by this section shall be of a type approved by the division of motor vehicles.

(e) Every bicycle shall be equipped with a brake which will enable the operator to make the braked wheels skid on dry, level, clean pavement.

(f) Every bicycle is encouraged to be equipped with a flag clearly visible from the rear and suspended not less than six (6) feet above the roadway when the bicycle is standing upright. The flag shall be fluorescent orange in color.

History: En. Sec. 87, Ch. 263, L. 1955;
amd. Sec. 1, Ch. 351, L. 1975.

Amendments

The 1975 amendment deleted "and with a red reflector on the rear of a type approved by the board which shall be visible from all distances from fifty (50) feet to three hundred (300) feet to the rear when directly in front of lawful upper beams of head lamps on a motor vehicle" from

the end of the first sentence of subsection (a); substituted "rear-facing reflectors required by this section" for "the red reflector" at the end of the second sentence of subsection (a); inserted subsections (b) to (d); redesignated former subsection (b) as (e); and added subsection (f).

Effective Date

Section 2 of Ch. 351, Laws 1975 read "This act is effective July 1, 1976."

32-2191. Obedience to signal indicating approach of train.

Jury Instructions

Failure of trial court to instruct jury that decedent had been contributorily negligent if he failed to stop, look and listen when either tracks or highway

signs indicated the presence of a railway crossing was reversible error. *O'Brien v. Great Northern Ry. Co.*, 145 M 13, 400 P 2d 634, cert. den. 387 US 920, 87 S Ct 2034.

32-2192. All vehicles must stop at certain railroad grade crossings. The department of highways and local authorities may designate particularly dangerous highway grade crossings of railroads and erect stop signs

at these crossings. When these stop signs are erected, the driver of a vehicle shall stop within fifty (50) feet but not less than fifteen (15) feet from the nearest rail of the railroad and shall proceed only upon exercising due care.

History: En. Sec. 89, Ch. 263, L. 1955;
amd. Sec. 64, Ch. 316, L. 1974.

Amendments

The 1974 amendment substituted "department of highways" for "commission" in the first sentence; and made minor changes in phraseology and punctuation.

32-2193. Certain vehicles must stop at all railroad grade crossings.

(a) The driver of any motor vehicle carrying passengers for hire or of any school bus or of any vehicle carrying explosive substances or flammable liquids as a cargo or part of a cargo, before crossing at grade any track or tracks of a railroad, shall stop such vehicle within 50 feet but not less than 15 feet from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train, and for signals indicating the approach of a train, except as hereinafter provided, and shall not proceed until he can do so safely. After stopping as required herein and upon proceeding when it is safe to do so the driver of any said vehicle shall cross only in such gear of the vehicle that there will be no necessity for changing gears while traversing such crossings and the driver shall not shift gears while crossing the track or tracks.

(b) No stop need be made at any such crossing where a police officer or highway patrolman or traffic-control signal directs traffic to proceed.

(c) This section shall not apply at street-railway grade crossings within a business or residence district.

History: En. Sec. 90, Ch. 263, L. 1955;
amd. Sec. 1, Ch. 244, L. 1977.

Amendments

The 1977 amendment deleted "carrying

any school child" near the beginning of the first sentence of subsection (a) after "school bus"; and made minor changes in punctuation and style.

32-2195. Vehicles must stop at stop signs. (a) The department of highways with reference to state highways and local authorities with reference to other highways under their jurisdiction may designate through highways and erect stop signs at specified entrances to these highways or may designate an intersection as a stop intersection and erect similar signs at one (1) or more entrances to that intersection.

(b) The sign shall bear the word "Stop" in letters not less than eight (8) inches in height, and it shall be made luminous at nighttime by steady or flashing internal illumination, or by a fixed floodlight projected on the face of the sign, or by efficient reflecting elements on the face of the sign.

(c) The stop sign shall be erected as near as practicable to the nearest line of the crosswalk on the near side of the intersection or, if there is no crosswalk, then as close as practicable to the nearest line of the roadway.

(d) A driver of a vehicle approaching a stop sign shall stop before entering the crosswalk on the near side of the intersection, or in the event there is no crosswalk, he shall stop at a clearly marked stop line, but if

none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection except when directed to proceed by a police officer or highway patrolman or traffic-control signal.

History: En. Sec. 92, Ch. 263, L. 1955; amd. Sec. 65, Ch. 316, L. 1974.

Amendments

The 1974 amendment substituted "department of highways" for "commission" in subsection (a); and made minor changes in phraseology and punctuation.

Four Way Stops

The vehicle approaching from the right that would otherwise have the right of way loses the preference on approaching a four way stop because it is required to stop; where two drivers approached a four way stop, neither had a statutory right of way or "preferred" or "favored" driver

status and both were required to exercise ordinary care as they proceeded into or through the intersection. *Elliott v. Hansen*, — M —, 519 P 2d 411.

"Preferred" Driver Status

Where two vehicles collided at four-way stop, one vehicle traveling south to north and other vehicle traveling east to west, both drivers had duty to make full stop before entering intersection and to exercise ordinary care to determine whether it was safe to proceed through intersection, but neither driver had "preferred" driver status. *Elliott v. Hansen*, — M —, 519 P 2d 411.

32-2197. Overtaking and passing school bus. (a) The driver of a vehicle upon a highway outside the corporate limits of any city or town upon meeting or overtaking from either direction any school bus which has stopped on the highway for the purpose of receiving or discharging any school children shall stop the vehicle before reaching such school bus when there is in operation on said bus a visual flashing red signal as specified in section 32-21-132 and said driver shall not proceed until such school bus resumes motion, and in addition the driver of a vehicle must slow and proceed with caution when meeting or overtaking from either direction any school bus which is preparing to stop on the highway for the purpose of receiving or discharging any school children as indicated by flashing amber lights as specified in section 32-21-132.

(b) Every bus used for the transportation of school children shall bear upon the front and rear thereof plainly visible signs containing the words "SCHOOL BUS" in letters not less than 8 inches in height, and in addition shall be equipped with visual signals meeting the requirements of section 32-21-132. Amber flashing lights shall be actuated by the driver approximately 500 feet before the bus is stopped to receive or discharge school children on the highway. Red lights shall be actuated by the driver of said school bus whenever but only whenever such vehicle is stopped on the highway for the purpose of receiving or discharging school children.

(c) and (d) * * * [Same as parent volume.]

History: En. Sec. 94, Ch. 263, L. 1955; amd. Sec. 1, Ch. 100, L. 1961; amd. Sec. 2, Ch. 250, L. 1965; amd. Sec. 1, Ch. 45, L. 1971; amd. Sec. 2, Ch. 244, L. 1977.

Amendments

The 1965 amendment inserted "or is preparing to stop" after "which has stopped" in subsection (a); divided subsection (b) into the present first and third sentences of subsection (b); inserted the second sentence in subsection (b); and substituted "Red lights" for "which" at

the beginning of the third sentence of subsection (b).

The 1971 amendment deleted "or is preparing to stop" after "any school bus which has stopped" in subsection (a); inserted "flashing red" before "signal" at the middle part of the section; deleted "or is signaled by the school bus driver to proceed as the visual signals are no longer actuated" from the end of subsection (a); and added "and in addition the driver * * * as specified in section 32-21-132" at the end of subsection (a).

The 1977 amendment substituted the second sentence of subsection (b) for "Amber flashing lights shall be actuated by the driver approximately one hundred and fifty (150) feet in cities, and approximately five hundred (500) feet in other areas before the bus is stopped to

receive or discharge school children"; and made minor changes in style.

Cross-References

Lettering requirement under school code, sec. 75-7002.

32-2198. Special lighting equipment on school buses. It shall be unlawful to operate any flashing warning signal light on any school bus except when any said school bus is preparing to stop or is stopped on a highway for the purpose of permitting school children to board or alight from said school bus.

History: En. Sec. 95, Ch. 263, L. 1955; amd. Sec. 3, Ch. 250, L. 1965.

Amendments

The 1965 amendment inserted "is preparing to stop or" before "is stopped."

32-2199. Stopping, standing, or parking, etc.

Visibility Impaired

This section prohibits stopping in a traffic lane even under weather conditions

causing poor visibility. Kirby v. Kelly, — M —, 504 P 2d 683.

32-21-101. Stopping, standing, or parking prohibited in specified places.

Negligence as Matter of Law

Crane driver whose crane was blocking bridge was not negligent as matter of law even though he parked crane on bridge in violation of statute proscribing drivers from parking vehicles upon bridge

where suit was between driver of automobile which stopped to avoid crane and driver of second automobile which rear-ended first. Jimison v. United States, 427 F 2d 1133, affirming 267 F Supp 674.

32-21-102. Additional parking regulations. (a) Except as otherwise provided in this section, a vehicle stopped or parked upon a roadway where there are adjacent curbs shall be stopped or parked with the right-hand wheels of the vehicle parallel to and within eighteen (18) inches of the right-hand curb.

(b) A local authority may by ordinance permit parking of a vehicle with the left-hand wheels adjacent to and within eighteen (18) inches of the left-hand curb of a one-way roadway.

(c) A local authority may by ordinance permit angle parking on a roadway, except that angle parking shall not be permitted on any federal-aid or state highway unless the department of highways determines that the roadway is of sufficient width to permit angle parking without interfering with the free movement of traffic.

(d) The department with respect to highways under its jurisdiction may place signs prohibiting or restricting the stopping, standing, or parking of vehicles on a highway where in its opinion this stopping, standing, or parking, is dangerous to those using the highway or where the stopping, standing, or parking of vehicles would unduly interfere with the free movement of traffic on it. These signs shall be official signs, and a person may not stop, stand, or park a vehicle in violation of the restrictions stated on these signs.

History: En. Sec. 99, Ch. 263, L. 1955; amd. Sec. 66, Ch. 316, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment of highways" for "commission" made minor changes in phraseology and in subsection (c) and "department" for punctuation.
 "commission" in subsection (d); and

32-21-105. Riding on motorcycles. (1) A person operating a motorcycle on public streets or highways shall ride only upon the permanent and regular seat attached thereto, and such operator shall not carry any other person nor shall any other person ride on a motorcycle unless such motorcycle is designed to carry more than one (1) person, in which event a passenger may ride upon the permanent and regular seat if designed for two (2) persons, or upon another seat firmly attached to the rear or side of the operator.

(2) No passenger shall be carried in a position that will interfere with the operation of the motorcycle or the view of the operator.

(3) No person operating a motorcycle shall carry any packages, bundles, or articles which would interfere with the operation of said vehicle in a safe and prudent manner.

(4) "Side saddle" riding on a motorcycle is prohibited.

(5) Motorcycles are to be operated with lights on at all times when operated on any public highway or street.

(6) Not more than two (2) motorcycles shall be operated side by side in a single traffic lane.

(7) All motor vehicles including motorcycles, are entitled to the full use of a traffic lane, and no vehicle shall be driven or operated in such a manner so as to deprive any other vehicle of the full use of a traffic lane, except that motorcycles may, with the consent of both drivers, be operated not more than two (2) abreast in a single traffic lane.

(8) Every person riding a motorcycle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a motor vehicle except as to those provisions which, by their nature, can have no application.

History: En. Sec. 102, Ch. 263, L. 1955; amd. Sec. 1, Ch. 175, L. 1967.

Amendments

The 1967 amendment numbered the

first paragraph as subsection (1); inserted "on public streets or highways" after "motorcycle" in that subsection; and added subsections (2) through (8).

32-21-105.1. Headgear required for minor motorcycle riders—noise suppression devices. (1) An operator and passenger under 18 years of age of any motorcycle operated upon the streets or highways of this state shall wear protective headgear upon the head. The headgear shall meet standards established by the department of justice.

(2) All motorcycles operated on the streets and highways of this state shall be equipped at all times with noise suppression devices, including an exhaust muffler, in good working order, and in constant operation. In addition, all motorcycles operating on streets and highways shall meet the following noise decibel limitations, on the standard A scale, such decibel limitations to be measured at 50 feet distant from the closest point to the motorcycle:

- (a) Any motorcycle manufactured prior to 1970 . . . 92 db(A)
- (b) Any motorcycle manufactured after 1969 but prior to 1973 . . . 88 db(A)
- (c) Any motorcycle manufactured after 1972 but prior to 1975 . . . 86 db(A)
- (d) Any motorcycle manufactured after 1974 but prior to 1978 . . . 80 db(A)
- (e) Any motorcycle manufactured after 1977 but prior to 1988 . . . 75 db(A)
- (f) Any motorcycle manufactured after 1987 . . . 70 db(A).
- (3) A person convicted of the violation of subsection (1) above shall be fined \$5.

(4) A person convicted of the violation of subsection (2) above shall be punished by a fine of not less than \$10 or more than \$100 or by imprisonment for not more than 10 days or by both such fine and imprisonment for the first such conviction; for a second conviction within 1 year thereafter, such person shall be punished by a fine of not less than \$25 or more than \$200 or by imprisonment for not more than 20 days or by both such fine and imprisonment; upon a third or subsequent conviction within 1 year after the first conviction, such person shall be punished by a fine of not less than \$50 or more than \$500 or by imprisonment for not more than 6 months or by both such fine and imprisonment.

History: En. Sec. 1, Ch. 398, L. 1973; amd. Sec. 1, Ch. 179, L. 1974; amd. Sec. 1, Ch. 273, L. 1974; amd. Sec. 1, Ch. 54, L. 1977.

Title of Act

An act to regulate the operation of motorcycles.

Amendments

Chapter 179, Laws of 1974, added the provisions pertaining to decibel noise limits to subsection (2).

Chapter 273, Laws of 1974, added subsections (3) and (4).

The 1977 amendment inserted "under 18 years of age" near the beginning of subsection (1); and made minor changes in phraseology, punctuation and style.

32-21-108. Coasting prohibited.

Emergency Action

Violation of this section by traveling on a downgrade with the clutch manually disengaged was not negligence per se

where violation was involuntary in an emergency due to circumstances beyond driver's control. *Duchesneau v. Silver Bow County*, 158 M 369, 492 P 2d 926.

32-21-112.1. Riding in house trailers. No person or persons may occupy a house trailer while it is being moved upon a public highway unless the trailer is of a semitrailer design where some part of its own weight and that of its cargo rests upon, or is carried by, its towing unit through the use of a fifth-wheel type trailer hitch, mounted on no less than a one-half ($\frac{1}{2}$) ton rated truck.

History: Sec. 109.1, Ch. 263, L. 1955 as added by Sec. 1, Ch. 167, L. 1957; amd. Sec. 1, Ch. 21, L. 1975.

Amendments

The 1975 amendment added "unless the trailer is of a semitrailer design * * * one-half ($\frac{1}{2}$) ton rated truck"; and made a minor change in phraseology.

32-21-113. Shooting from or across highway.—No person shall shoot any firearm from or across the roadway of any state or federal highway, or county road.

History: En. Sec. 110, Ch. 263, L. 1955; amd. Sec. 1, Ch. 25, L. 1974.

Amendments

The 1974 amendment added "or county road" at the end of the section.

32-21-114. Scope and effect of regulations.

Military Personnel

Noncommissioned officer acting under direct order to engage in emergency snow removal project related to threatened flood and who was operating a tilt deck trailer

upon a public highway without proper lights was immune from prosecution under this section. State of Montana, County of Fergus, Township of Lewistown v. Christopher, 345 F Supp 60.

32-21-118. Tail lamps.

County Road Grader

Statute requiring that tail lamps be not more than 72 inches from ground did not apply to county road grader on which two red tail lamps had been mounted ten feet from ground; motorist suing county for

injury sustained when auto struck road grader from rear was not entitled to instruction that statute had been violated and that county was therefore negligent as matter of law. Bernhard v. Lincoln County, 150 M 557, 437 P 2d 377.

32-21-122. Additional equipment required on certain vehicles. In addition to other equipment required in this act the following vehicles shall be equipped as herein stated under the conditions stated in section 32-21-121.

(a) to (e) * * * [Same as parent volume.]

(f) On every trailer, semitrailer, or pole trailer weighing three thousand (3,000) pounds gross or less:

On the front, a steel chain or cable which shall be securely fastened to the towing unit with the minimum diameter of any portion of such chains or cables being one-fourth ($\frac{1}{4}$) of one inch.

On the rear, two (2) reflectors, one (1) on each side. If any trailer or semitrailer is so loaded or is of such dimensions as to obscure the stop light on the towing vehicle, then such vehicle shall also be equipped with one (1) stop light.

(g) and (h) * * * [Same as parent volume.]

History: En. Sec. 119, Ch. 263, L. 1955; amd. Sec. 1, Ch. 233, L. 1959; amd. Sec. 1, Ch. 182, L. 1974.

Amendments

The 1974 amendment inserted the second paragraph in subdivision (f) relating to steel chains or cables on the front of trailers.

32-21-130. Lamps on other vehicles and equipment—emblem to be used on certain slow-moving vehicles—slow-moving vehicles to permit overtaking vehicles to pass. (a) Every vehicle, including animal-drawn vehicles and vehicles referred to in section 32-21-114 (c), not specifically required by the provisions of sections 32-21-114 to 32-21-153 to be equipped with lamps or other lighting devices, shall at all times specified in section 32-21-115 be equipped with at least one (1) lamp displaying a white light visible from a distance of not less than five hun-

dred (500) feet to the front of said vehicle, and shall also be equipped with two (2) lamps displaying red light visible from a distance of not less than five hundred (500) feet to the rear of said vehicle, or as an alternative, one (1) lamp displaying a red light visible from a distance of not less than five hundred (500) feet to the rear and two (2) red reflectors visible for distances of one hundred (100) to six hundred (600) feet to the rear when illuminated by the upper beams of head lamps.

(b) It shall be unlawful, after January 1, 1970, for any person to operate on the roadway of any state highway, farm, rural or county roads and city streets of this state any slow-moving vehicle or equipment, any animal-drawn vehicle, or any other machinery designed for use at speeds less than twenty-five (25) miles per hour, including all road construction or maintenance machinery, except when engaged in actual construction or maintenance work either guarded by a flagman or clearly visible warning signs, which normally travels or is normally used at a speed of less than twenty-five (25) miles per hour unless there is displayed on the rear thereof an emblem as described in and displayed as provided in subsection (c) of this section. The requirement of such emblem shall be in addition to any lighting devices required by law.

(c) The emblem required by subsection (b) of this section shall be of substantial construction, and shall be a based-down equilateral triangle of fluorescent yellow-orange film or equivalent quality paint with a base of fourteen (14) inches and an altitude of twelve (12) inches. Such triangle shall be bordered with reflective red strips having a minimum width of one and three-fourths ($1\frac{3}{4}$) inches, with the vertices of the overall triangle truncated such that the remaining altitude shall be a minimum of fourteen (14) inches. Such emblem shall be mounted on the rear of such vehicle near the horizontal geometric center of the vehicle at a height of three (3) to five (5) feet above the roadway, and shall be maintained in a clean, reflective condition.

(d) Any person violating the provisions of this section shall be subject to penalty as provided for in section 32-21-157.

(e) In addition to the foregoing requirements, on a highway that has only two lanes for traffic moving in opposite directions, when an overtaking vehicle being operated in conformity with section 32-2144, R. C. M. 1947, does not have a clear lane for passing as required by section 32-2155 and section 32-2156, R. C. M. 1947, the driver of a slower-moving, overtaken vehicle shall, at the first opportunity, whenever sufficient area for a safe turnout exists, move the overtaken vehicle off the main-traveled portion of the highway until the overtaking vehicle is safely clear of the overtaken vehicle.

History: En. Sec. 127, Ch. 263, L. 1955;
amd. Sec. 1, Ch. 247, L. 1969.

Amendments

The 1969 amendment added subsections (b) through (e); and designated the first paragraph as subsection (a).

32-21-132. Audible and visual signals on vehicles. (a) A police vehicle shall be equipped with a siren capable of giving an audible signal

and may, but need not, be equipped with alternately flashing or rotating red or blue lights as specified herein. The use of signal equipment described herein shall impose upon the drivers of other vehicles, the obligation to yield right of way and/or to stop and to proceed past such signal or light only with caution and at a speed which is no greater than is reasonable and proper under the conditions existing at the point of operation.

(b) Every authorized emergency vehicle shall, in addition to any other equipment and distinctive markings required by this act, be equipped with a siren, and an alternately flashing or rotating red light as specified herein.

(c) Every authorized emergency vehicle shall, in addition to any other equipment and distinctive markings required by this act, be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, which shall be capable of displaying to the front two (2) alternately flashing red lights located at the same level and to the rear two (2) alternately flashing red lights located at the same level, and these lights shall have sufficient intensity to be visible at five hundred (500) feet in normal sunlight.

(d) Every bus used for the transportation of school children shall, in addition to any other equipment and distinctive markings required by this act, be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, displaying to the front two (2) red and two (2) amber alternating flashing lights and to the rear two (2) red and two (2) amber alternating flashing lights. These lights shall have sufficient intensity to be visible at five hundred (500) feet in normal sunlight. The warning lights shall be of a type, and located on each bus, as prescribed by the state board of education and approved by the supervisor of the highway patrol.

(e) Police vehicles and authorized emergency vehicles may, and emergency service vehicles shall, in addition to any other equipment and distinctive markings required by this act be equipped with alternately flashing or rotating amber lights as specified herein. The use of signal equipment described herein shall impose upon the drivers of other vehicles, the obligation to yield right of way and/or to stop and to proceed past such signal or light only with caution and at a speed which is no greater than is reasonable and proper under the conditions existing at the point of operation.

(f) Blue, red and amber lights required in subsections (a), (b) and (c) of this act shall be mounted as high as and as widely spaced laterally as practicable and capable of displaying to the front two (2) alternately flashing lights of the specified color located at the same level and to the rear two (2) alternately flashing lights of the specified color located at the same level or as an alternative, one (1) rotating light of the specified color, mounted as high as is practicable which shall be both visible front and rear. These lights shall have sufficient intensity to be visible at five hundred (500) feet in normal sunlight. The use of blue lights as required in

subsection (a) of this act shall be restricted to police vehicles as defined in section 32-2102, R. C. M. 1947.

History: En. Sec. 129, Ch. 263, L. 1955; amd. Sec. 1, Ch. 40, L. 1959; amd. Sec. 1, Ch. 250, L. 1965; amd. Sec. 4, Ch. 153, L. 1975.

Amendments

The 1965 amendment deleted "Every bus used for the transportation of school children and" at the beginning of subsection (b); inserted a new subsection (c); and redesignated former subsection (c) as (d).

The 1975 amendment inserted subsection (a); redesignated former subsections (a) through (d) as (b) through (e); substituted "and an alternately flashing or rotating red light as specified herein" at the end of subsection (b) for "exhaust whistle or bell capable of giving an audible signal"; rewrote subsection (e), for prior version of which see subsection (d) in the parent volume; and added subsection (f).

32-21-141.1. Blinker-type red light, etc.

Compiler's Notes

Section 3, Ch. 489, Laws 1977, substi-

tuted references to firefighters for references to firemen.

32-21-143. Repealed.

Repeal

This section (Sec. 140, Ch. 263, L. 1955; Sec. 1, Ch. 81, L. 1957) relating to brakes

required on vehicles, was repealed by Sec. 5, Ch. 139, Laws 1965.

32-21-143.1. Brake equipment required. Every motor vehicle, trailer, semitrailer and pole trailer, and any combination of such vehicles operating upon a highway within this state shall be equipped with brakes in compliance with the requirements of this chapter.

(a) Service brakes—adequacy. Every such vehicle and combination of vehicles, except special mobile equipment as defined in sections 32-2102 (h) and 53-639, R. C. M., 1947, shall be equipped with service brakes complying with the performance requirements of section 2 [32-21-143.2] of this act and adequate to control the movement of and to stop and hold such vehicle under all conditions of loading, and on any grade incident to its operation.

(b) Parking brakes—adequacy. Every such vehicle and combination of vehicles, except motorcycles and motor-driven cycles, shall be equipped with parking brakes adequate to hold the vehicle on any grade on which it is operated, under all conditions of loading, on a surface free from snow, ice or loose material. The parking brakes shall be capable of being applied in conformance with the foregoing requirements by the driver's muscular effort or by spring action or by equivalent means. Their operation may be assisted by the service brakes or other source of power provided that failure of the service brake actuation system or other power assisting mechanism will not prevent the parking brakes from being applied in conformance with the foregoing requirements. The parking brakes shall be so designed that when once applied they shall remain applied with the required effectiveness despite exhaustion of any source of energy or leakage of any kind. The same brake drums, brake shoes and lining assemblies, brake shoe anchors and mechanical brake shoe actuation mechanism normally associated with the wheel brake assemblies may be used for both the service brakes and the parking brakes. If the means of applying the parking brakes and the service brakes are connected in any

way, they shall be so constructed that failure of any one part shall not leave the vehicle without operative brakes.

(c) Brakes on all wheels. Every vehicle shall be equipped with brakes acting on all wheels except:

1. Trailers, semitrailers, pole trailers of a gross weight not exceeding three thousand (3,000) pounds, provided that:

a. The total weight on and including the wheels of the trailer or trailers shall not exceed forty per cent (40%) of the gross weight of the towing vehicle when connected to the trailer or trailers, and

b. The combination of vehicles, consisting of the towing vehicle and its total towed load, is capable of complying with the performance requirements of section 2 [32-21-143.2] of this act.

2. Any vehicle being towed in driveaway or towaway operations, provided the combination of vehicles is capable of complying with the performance requirements of section 2 [32-21-143.2] of this act.

3. Trucks and truck-tractors having three (3) or more axles need not have brakes on the front wheels, except that when such vehicles are equipped with at least two steerable axles, the wheels of one steerable axle need not have brakes. However, such trucks and truck-tractors must be capable of complying with the performance requirements of section 2 [32-21-143.2] of this act.

4. Special mobile equipment as defined in section 32-2102 (h) and 53-639, R. C. M., 1947.

5. The wheel of a sidecar attached to a motorcycle or to a motor-driven cycle, or the front wheel of a motor-driven cycle need not be equipped with brakes, provided that such motorcycle or motor-driven cycle is capable of complying with the performance requirements of section 2 [32-21-143.2] of this act.

(d) Automatic trailer brake application upon breakaway. Every trailer, semitrailer and pole trailer equipped with air or vacuum actuated brakes and every trailer, semitrailer and pole trailer with a gross weight in excess of three thousand (3,000) pounds, manufactured or assembled after January 1, 1966, shall be equipped with brakes acting on all wheels and of such character as to be applied automatically and promptly, and remain applied for at least fifteen (15) minutes, upon breakaway from the towing vehicle.

(e) Tractor brakes protected. Every motor vehicle manufactured or assembled after January 1, 1966, and used to tow a trailer, semitrailer or pole trailer equipped with brakes, shall be equipped with means for providing that in case of breakaway of the towed vehicle, the towing vehicle will be capable of being stopped by the use of its service brakes.

(f) Trailer air reservoirs safeguarded. Air brake systems installed on trailers manufactured or assembled after January 1, 1966, shall be so designed that the supply reservoir used to provide air for the brakes shall be safeguarded against backflow of air from the reservoir through the supply line.

(g) Two means of emergency brake operation. 1. Air brakes. After January 1, 1966, every towing vehicle, when used to tow another vehicle equipped with air controlled brakes, in other than driveaway or towaway operations, shall be equipped with two (2) means for emergency application of the trailer brakes. One of these means shall apply the brakes automatically in the event of a reduction of the towing vehicle air supply to a fixed pressure which shall be not lower than twenty (20) pounds per square inch nor higher than forty-five (45) pounds per square inch. The other means shall be a manually controlled device for applying and releasing the brakes, readily operable by a person seated in the driving seat, and its emergency position or method of operation shall be clearly indicated. In no instance may the manual means be so arranged as to permit its use to prevent operation of the automatic means. The automatic and the manual means required by this section may be, but are not required to be, separate.

2. Vacuum brakes. After January 1, 1966, every towing vehicle used to tow other vehicles equipped with vacuum brakes, in operations other than driveaway or towaway operations, shall have, in addition to the single control device required by subsection (h), a second control device which can be used to operate the brakes on towed vehicles in emergencies. The second control shall be independent of brake air, hydraulic, and other pressure, and independent of other controls, unless the braking system be so arranged that failure of the pressure upon which the second control depends will cause the towed vehicle brakes to be applied automatically. The second control is not required to provide modulated braking.

(h) Single control to operate all brakes. After January 1, 1966, every motor vehicle, trailer, semitrailer and pole trailer, and every combination of such vehicles, except motorcycles and motor-driven cycles, equipped with brakes shall have the braking system so arranged that one control device can be used to operate all service brakes. This requirement does not prohibit vehicles from being equipped with an additional control device to be used to operate brakes on the towed vehicles. This regulation does not apply to driveaway or towaway operations unless the brakes on the individual vehicles are designed to be operated by a single control on the towing vehicle.

(i) Reservoir capacity and check valve. 1. Air brakes. Every bus, truck or truck-tractor with air operated brakes shall be equipped with at least one reservoir sufficient to insure that, when fully charged to the maximum pressure as regulated by the air compressor governor cut-out setting, a full service brake application may be made without lowering such reservoir pressure by more than twenty per cent (20 %). Each reservoir shall be provided with means for readily draining accumulated oil or water.

2. Vacuum brakes. After January 1, 1966, every truck with three (3) or more axles equipped with vacuum assistor type brakes and every truck-tractor and truck used for towing a vehicle equipped with vacuum brakes shall be equipped with a reserve capacity or a vacuum reservoir sufficient to insure that, with the reserve capacity or reservoir fully charged and

with the engine stopped, a full service brake application may be made without depleting the vacuum supply by more than forty per cent (40%).

3. Reservoir safeguarded. All motor vehicles, trailers, semitrailers and pole trailers, when equipped with air or vacuum reservoirs or reserve capacity as required by this section, shall have such reservoirs or reserve capacity so safeguarded by a check valve or equivalent device that in the event of failure or leakage in its connection to the source of compressed air or vacuum, the stored air or vacuum shall not be depleted by the leak or failure.

(j) Warning devices. 1. Air brakes. Every bus, truck or truck-tractor using compressed air for the operation of its own brakes or the brakes on any towed vehicle, shall be provided with a warning signal, other than a pressure gauge, readily audible or visible to the driver, which will operate at any time the air reservoir pressure of the vehicle is below fifty per cent (50%) of the air compressor governor cut-out pressure. In addition, each such vehicle shall be equipped with a pressure gauge visible to the driver, which indicates in pounds per square inch the pressure available for braking.

2. Vacuum brakes. After January 1, 1966, every truck-tractor and truck used for towing a vehicle equipped with vacuum operated brakes and every truck with three (3) or more axles using vacuum in the operation of its brakes, except those in driveaway or towaway operations, shall be equipped with a warning signal, other than a gauge indicating vacuum, readily audible or visible to the driver, which will operate at any time the vacuum in the vehicle's supply reservoir or reserve capacity is less than eight (8) inches of mercury.

3. Combination of warning devices. When a vehicle required to be equipped with a warning device is equipped with both air and vacuum power for the operation of its own brakes or the brakes on a towed vehicle, the warning devices may be, but are not required to be, combined into a single device which will serve both purposes. A gauge or gauges indicating pressure or vacuum shall not be deemed to be an adequate means of satisfying this requirement.

History: En. Sec. 1, Ch. 139, L. 1965.

Compiler's Notes

Section 53-639, referred to in subdivisions (a) and (c) 4 of this section, was repealed by Sec. 12-109, Ch. 197, L. 1965.

Title of Act

An act to establish uniform and modern regulations relating to brakes on vehicles; requiring brakes on all vehicles and spe-

cifying exceptions thereto; requiring vehicles to be equipped with both service and parking brakes; establishing performance ability of brakes; defining hydraulic brake fluid; authorizing patrol board to adopt brake fluid standards and specifications; prohibiting the sale of brake fluid which does not meet specifications; repealing section 32-21-143, R. C. M., 1947, and all acts or parts of acts in conflict herewith.

DECISIONS UNDER FORMER LAW

Double Jeopardy

Conviction under former section 32-21-143 did not bar prosecution for involuntary manslaughter arising out of the same

accident in subsequent action, because proof of the latter requires proof of an additional fact. *State v. McDonald*, 158 M 307, 491 P 2d 711.

32-21-143.2. Performance ability of brakes. Every motor vehicle and combination of vehicles, at all times and under all conditions of loading, upon application of the service brake, shall be capable of:

(a) Developing a braking force that is not less than the percentage of its gross weight tabulated herein for its classification,

(b) Decelerating to a stop from not more than twenty (20) miles per hour at not less than the feet per second per second tabulated herein for its classification, and

(c) Stopping from a speed of twenty (20) miles per hour in not more than the distance tabulated herein for its classification, such distance to be measured from the point at which movement of the service brake pedal or control begins.

Tests for deceleration and stopping distance shall be made on a substantially level (not to exceed plus or minus one per cent (1%) grade), dry, smooth, hard surface that is free from loose material.

Classification of Vehicles

Classification of Vehicles	Braking force as a percentage of gross vehicle or combination weight	Deceleration in feet per second per second	Brake system application and braking distance in feet from an initial speed of twenty (20) miles per hour
A Passenger vehicles with a seating capacity of ten (10) people or less including driver, not having a manufacturer's gross vehicle weight rating-----	52.8%	17	25
B-1 All motorcycles and motor-driven cycles	43.5%	14	30
B-2 Single unit vehicles with a manufacturer's gross vehicle weight rating of ten thousand (10,000) pounds or less-----	43.5%	14	30
C-1 Single unit vehicles with a manufacturer's gross weight rating of more than ten thousand (10,000) pounds---	43.5%	14	40
C-2 Combination of a two-axle towing vehicle and a trailer with a gross trailer weight of three thousand (3,000) pounds or less	43.5%	14	40
C-3 Buses, regardless of the number of axles, not having a manufacturer's gross weight rating -----	43.5%	14	40
C-4 All combinations of vehicles in driveaway-towaway operations -----	43.5%	14	40
D All other vehicles and combinations of vehicles -----	43.5%	14	50

History: En. Sec. 2, Ch. 139, L. 1965.

32-21-143.3. Maintenance of brakes. All brakes shall be maintained in good working order and shall be so adjusted as to operate as equally as practicable with respect to the wheels on opposite sides of the vehicle.

History: En. Sec. 3, Ch. 139, L. 1965.

32-21-143.4. Hydraulic brake fluid. (a) The term "hydraulic brake fluid" as used in this section shall mean the liquid medium through which force is transmitted to the brakes in the hydraulic brake system of a vehicle.

(b) Hydraulic brake fluid shall be distributed and serviced with due regard for the safety of the occupants of the vehicle and the public.

(c) The Montana highway patrol board shall, after public hearing following due notice, adopt and enforce regulations for the administration of this section and shall adopt and publish standards and specifications for hydraulic brake fluid which shall correlate with, and so far as practicable conform to, the then current standards and specifications of the society of automotive engineers applicable to such fluid.

(d) No person shall distribute, have for sale, offer for sale, or sell any hydraulic brake fluid unless it complies with the requirements of this section. No person shall service any vehicle with brake fluid unless it complies with the requirements of this section.

History: En. Sec. 4, Ch. 139, L. 1965. "Repealing section 32-21-143, R. C. M. 1947, and all acts or parts of acts in conflict herewith."

Repealing Clause

Section 5 of Ch. 139, Laws 1965 read

32-21-144. Brakes on motor-driven cycles.

Compiler's Notes section (a) in the parent volume, was repealed by Sec. 5, Ch. 139, Laws 1965.
Section 32-21-143, referred to in sub-

32-21-149. Restrictions as to tire equipment. (a) A solid rubber tire on a vehicle shall have rubber on its entire traction surface at least one (1) inch thick above the edge of the flange of the entire periphery.

(b) A person may not operate or move on a highway a motor vehicle, trailer, or semitrailer having a metal tire in contact with the roadway.

(c) A tire on a vehicle moved on a highway may not have on its periphery a block, stud, flange, cleat, or spike or other protuberance of a material other than rubber which projects beyond the tread of the traction surface of the tire, except that it is permissible to use farm machinery with tires having protuberances which will not injure the highway. It is also permissible to use tire chains of reasonable proportions or pneumatic tires, the traction surfaces of which have been embedded with material such as wood, wire, plastic or metal, which may not protrude more than one-sixteenth (1/16) of an inch beyond the tire tread, upon a vehicle when required for safety because of snow, ice, or other conditions tending to cause a vehicle to skid. The use of pneumatic tires embedded as provided

in this section is permitted only between the first day of October and the last day of May of each year, except that one (1) of those tires may be used for a spare in case of tire failure. School buses equipped with such embedded pneumatic tires may operate from August 15 through the following June 15.

(d) The department of highways and local authorities in their respective jurisdictions may in their discretion issue special permits authorizing the operation upon a highway of farm tractors or other farm machinery, or of traction engines or tractors having movable tracks with transverse corrugations upon the periphery of the movable tracks, the operation of which upon the highway would otherwise be prohibited under this act.

(e) A person violating this section is guilty of a misdemeanor.

History: En. Sec. 146, Ch. 263, L. 1955; amd. Sec. 1, Ch. 92, L. 1967; amd. Sec. 1, Ch. 194, L. 1971; amd. Sec. 1, Ch. 192, L. 1973; amd. Sec. 67, Ch. 316, L. 1974.

Amendments

The 1967 amendment inserted "the" before "roadway" in subsection (b); and inserted "or pneumatic tires, the traction surfaces of which have been embedded with material such as wood, wire, plastic or metal" after "proportions" in subsection (c).

The 1971 amendment inserted "which

shall in no instance protrude more than one-sixteenth (1/16) of an inch beyond the tire tread" near the end of the first sentence of subsection (c); added the second sentence to subsection (c); and added subsection (e).

The 1973 amendment added the last sentence to subsection (c).

The 1974 amendment substituted "department of highways" for "commission" in subsection (d); substituted "this section" for "this act" in subsection (e); and made minor changes in phraseology and punctuation.

32-21-149.1. Fenders, splash aprons or flaps required on certain vehicles—dimension and location—violation a misdemeanor—penalty. (a) It shall be unlawful for any person to move, or permit to be moved, any truck, bus, truck-tractor, trailer or semitrailer, as defined in sections 32-2102 to 32-2105, R. C. M. 1947, inclusive, upon the public highways without having first equipped the rearmost wheels or set of wheels of such vehicle with fenders, splash aprons or flaps. Such fenders, splash aprons or flaps shall be designed, constructed and attached to the vehicle in such manner so as to arrest and deflect dirt, mud, water, rocks and other substances which may be picked up by the rear wheels of such vehicle and thrown into the air, as follows:

(1) If the vehicle is equipped with fenders the same shall extend in full width from a point above and forward of the center of the tire or tires over and to the rear thereof.

(2) If the vehicle is equipped with splash aprons or flaps the same shall extend downward in full width from a point not lower than halfway between the center of the tire or tires and the top of said tire or tires and to the rear thereof.

(3) If the vehicle is in excess of eight thousand (8,000) pounds gross vehicle weight, such fenders, splash aprons or flaps shall extend downward to a point that is not more than ten (10) inches above the surface of the highway when the vehicle is empty.

(4) If the vehicle is eight thousand (8,000) pounds, or less, gross vehicle weight, such fenders, splash aprons or flaps shall extend downward to a point that is not more than twenty (20) inches above the surface of the highway when the vehicle is empty.

(b) Fenders, splash aprons or flaps, as used in paragraph (a) of this section shall be deemed to be of sufficient size and construction as to comply with the requirements thereof, if constructed as follows:

(1) When measured on the cross-sections of the tread of the wheel or on the combined cross-sections of the treads of multiple wheels, such fender, splash apron or flap extends at least to each side of the width of the tire or of the combined width of the multiple tires, as the case may be; and

(2) Such fender, splash apron or flap is so constructed as to be capable at all times of arresting and deflecting such dirt, mud, water, or other substance as may be picked up and carried by such wheel or wheels.

(c) Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than ten dollars (\$10) nor more than twenty-five dollars (\$25), or by imprisonment in the county jail for a period of not more than thirty (30) days, or by both such fine and imprisonment.

History: En. Sec. 1, Ch. 286, L. 1969.

Title of Act

An act to require fenders or covers on certain wheels of specified types of motor

vehicles; defining the dimensions and locations of such fenders or covers; and providing penalties for any violation of this act.

32-21-150.1. Seat belts required in new vehicles. It is unlawful for any person to buy, sell, lease, trade or transfer from or to Montana residents at retail an automobile, which is manufactured or assembled commencing with the 1966 models, unless such vehicle is equipped with safety belts installed for use in the left front and right front seats thereof, and no such vehicle shall be operated in this state unless such belts remain installed.

History: En. Sec. 1, Ch. 115, L. 1965.

Title of Act

An act requiring that seat belts be installed in all automobiles manufactured or assembled commencing with the 1966

models; directing the highway patrol supervisor to establish specifications and requirements for approved types of safety belts and attachments; and providing a penalty.

32-21-150.2. Specifications for seat belts. All such safety belts must be of a type and must be installed in a manner approved by the highway patrol supervisor. The highway patrol supervisor shall establish specifications and requirements for approved types of safety belts and attachments thereto. The highway patrol supervisor will accept, as approved, all seat belt installations and the belt and anchor meeting the society of automotive engineers' specifications.

History: En. Sec. 2, Ch. 115, L. 1965.

32-21-150.3. Penalty for seat belt violations. Any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction shall be fined not to exceed one hundred dollars (\$100.00).

History: En. Sec. 3, Ch. 115, L. 1965.

32-21-151. Certain vehicles to carry flares or other warning devices. (a) and (b) * * * [Same as parent volume.]

(c) As an alternative to the equipment required in paragraphs (a) and (b) of this section, three (3) emergency reflective triangles conforming with U. S. department of transportation motor vehicle safety standard 125 may be carried.

History: En. Sec. 148, Ch. 263, L. 1955; amd. Sec. 1, Ch. 108, L. 1957; amd. Sec. 1, Ch. 70, L. 1975.

Amendments

The 1975 amendment added subsection (c).

32-21-155.1. Semiannual inspection of school buses. (1) The Montana highway patrol shall perform the semiannual inspection of school buses one of which shall be at least thirty (30) days prior to the beginning of the school term and reinspect the buses, if necessary, before the beginning of the school term.

(2) The Montana highway patrol's inspection shall determine if the school buses meet the minimum standards for school buses as adopted by the board of public education.

History: En. 32-21-155.1 by Sec. 2, Ch. 179, L. 1969; amd. Sec. 1, Ch. 141, L. 1973.

in subsection (1); and substituted the reference to the board of public education for a reference to the state board of education at the end of subsection (2).

Amendments

The 1973 amendment substituted "semi-annual inspection" for "annual inspection" in subsection (1); inserted "one of which shall be" before "at least thirty (30) days"

Cross-References

Reimbursement to schools for transportation of pupils, sec. 75-7018.

32-21-161. Commercial tow car requirements.

Application Limited

Where logging truck was struck from behind while engaged in removing disabled automobile from ditch, contention that logging truck violated this section by not being equipped with appropriate warn-

ing and safety devices was without merit since this section applies to tow cars and not vehicles such as logging truck herein involved. State ex rel. Eacker v. District Court, 154 M 36, 459 P 2d 686.

32-21-163. Unlawful operation by child under eighteen—concurrent original jurisdiction of district court and justice court—penalties—impounding of vehicle, when. The district courts and the justice courts of the state of Montana and the municipal and police courts of cities and towns shall have concurrent original jurisdiction in all proceedings concerning the unlawful operation of motor vehicles by children under the age of eighteen (18) years. Whenever, after a hearing before the court, it shall be found that a child under the age of eighteen (18) years has unlawfully operated a motor vehicle, the court may (a) impose a fine, not

exceeding fifty dollars (\$50), provided such child shall not be imprisoned for failure to pay such fine, (b) may revoke the driver's license of such child, or suspend the same for such time as may be fixed by the court, and (c) may order any motor vehicle owned or operated by such child to be impounded by the probation officer for such time, not exceeding sixty (60) days, as shall be fixed by the court; provided, however, that if the court shall find that the operation of such motor vehicle was without the consent of the owner, then such vehicle shall not be impounded. Upon nonpayment of any fine herein provided for, the court may order that any motor vehicle owned by said child or operated by said child with the consent of the owner shall be impounded until the fine shall be paid, or may order that the driver's license of such child shall be taken up and held by the probation officer until payment of said fine, or may cause both said motor vehicle and said driver's license to be taken up and impounded until such fine shall be paid; but no child shall be committed to or held in any detention facility or jail by reason of nonpayment of such fine.

History: En. Sec. 1, Ch. 215, L. 1959; amd. Sec. 1, Ch. 188, L. 1963.

Amendments

The 1963 amendment inserted "and the justice courts" and "and the municipal and police courts of cities and towns" in

the first sentence; substituted "concurrent original jurisdiction" for "exclusive original jurisdiction" in the first sentence; and added to clause (a) of the second sentence the words "provided such child shall not be imprisoned for failure to pay such fine."

32-21-164. Summons—issuing to child under eighteen. Whenever any child under the age of eighteen (18) years shall unlawfully operate a motor vehicle in the presence of any peace officer of any county, city or town, or in the presence of any state highway patrolman, such officer may deliver to said child a form of summons describing the nature of the offense, with instructions thereon to report to the district court or a justice court of the county or the municipal or police court of the city or town wherein the offense occurs; and the court shall be informed thereof by the delivery of a copy of said summons to the probation officer, who shall in turn deliver the same to the judge or justice of the peace.

History: En. Sec. 2, Ch. 215, L. 1959; amd. Sec. 2, Ch. 188, L. 1963.

Amendments

The 1963 amendment inserted "or a

justice court" and "or the municipal or police court of the city or town"; and substituted "judge or justice of the peace" for "district judge" at the end of the section.

32-21-166. Vehicle equipment safety compact—text. This act shall be known and may be cited as the "Vehicle Equipment Safety Compact."

ARTICLE I—FINDINGS AND PURPOSES

(a) The party states find that: (1) Accidents and deaths on their streets and highways present a very serious human and economic problem with a major deleterious effect on the public welfare.

(2) There is a vital need for the development of greater interjurisdictional co-operation to achieve the necessary uniformity in the laws, rules regulations and codes relating to vehicle equipment, and to accomplish

this by such means as will minimize the time between the development of demonstrably and scientifically sound safety features and their incorporation into vehicles.

(b) The purposes of this compact are to: (1) Promote uniformity in regulation of and standards for equipment.

(2) Secure uniformity of law and administrative practice in vehicular regulation and related safety standards to permit incorporation of desirable equipment changes in vehicles in the interest of greater traffic safety.

(3) To provide means for the encouragement and utilization of research which will facilitate the achievement of the foregoing purposes, with due regard for the findings set forth in subdivision (a) of this article.

(c) It is the intent of this compact to emphasize performance requirements and not to determine the specific detail of engineering in the manufacture of vehicles or equipment except to the extent necessary for the meeting of such performance requirements.

ARTICLE II—DEFINITIONS

As used in this compact: (a) "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

(b) "State" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(c) "Equipment" means any part of a vehicle or any accessory for use thereon which affects the safety of operation of such vehicle or the safety of the occupants.

ARTICLE III—THE COMMISSION

(a) There is hereby created an agency of the party states to be known as the "Vehicle Equipment Safety Commission" hereinafter called the commission. The commission shall be composed of one commissioner from each party state who shall be appointed, serve and be subject to removal in accordance with the laws of the state which he represents. If authorized by the laws of his party state, a commissioner may provide for the discharge of his duties and the performance of his functions on the commission, either for the duration of his membership or for any lesser period of time, by an alternate. No such alternate shall be entitled to serve unless notification of his identity and appointment shall have been given to the commission in such form as the commission may require. Each commissioner, and each alternate, when serving in the place and stead of a commissioner, shall be entitled to be reimbursed by the commission for expenses actually incurred in attending commission meetings or while engaged in the business of the commission.

(b) The commissioners shall be entitled to one vote each on the commission. No action of the commission shall be binding unless taken at a meeting at which a majority of the total number of votes on the com-

mission are cast in favor thereof. Action of the commission shall be only at a meeting at which a majority of the commissioners, or their alternates, are present.

(c) The commission shall have a seal.

(d) The commission shall elect annually, from among its members, a chairman, a vice-chairman and a treasurer. The commission may appoint an executive director and fix his duties and compensation. Such executive director shall serve at the pleasure of the commission, and together with the treasurer shall be bonded in such amount as the commission shall determine. The executive director also shall serve as secretary. If there be no executive director, the commission shall elect a secretary in addition to the other officers provided by this subdivision.

(e) Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director with the approval of the commission, or the commission if there be no executive director, shall appoint, remove or discharge such personnel as may be necessary for the performance of the commission's functions, and shall fix the duties and compensation of such personnel.

(f) The commission may establish and maintain independently or in conjunction with any one or more of the party states, a suitable retirement system for its full time employees. Employees of the commission shall be eligible for social security coverage in respect of old age and survivor's insurance provided that the commission takes such steps as may be necessary pursuant to the laws of the United States, to participate in such program of insurance as a governmental agency or unit. The commission may establish and maintain or participate in such additional programs of employee benefits as may be appropriate.

(g) The commission may borrow, accept or contract for the services of personnel from any party state, the United States, or any subdivision or agency of the aforementioned governments, or from any agency of two or more of the party states or their subdivisions.

(h) The commission may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any other governmental agency and may receive, utilize and dispose of the same.

(i) The commission may establish and maintain such facilities as may be necessary for the transacting of its business. The commission may acquire, hold, and convey real and personal property and any interest therein.

(j) The commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party states. The bylaws shall provide for appropriate notice to the commissioners of all commission meetings and hearings and the business to be transacted at such meetings or hearings.

Such notice shall also be given to such agencies or officers of each party state as the laws of such party state may provide.

(k) The commission annually shall make to the governor and legislature of each party state a report covering the activities of the commission for the preceding year, and embodying such recommendations as may have been issued by the commission. The commission may make such additional reports as it may deem desirable.

ARTICLE IV—RESEARCH AND TESTING

The commission shall have power to: (a) Collect, correlate, analyze and evaluate information resulting or derivable from research and testing activities in equipment and related fields.

(b) Recommend and encourage the undertaking of research and testing in any aspect of equipment or related matters when, in its judgment, appropriate or sufficient research or testing has not been undertaken.

(c) Contract for such equipment research and testing as one or more governmental agencies may agree to have contracted for by the commission, provided that such governmental agency or agencies shall make available the funds necessary for such research and testing.

(d) Recommend to the party states changes in law or policy with emphasis on uniformity of laws and administrative rules, regulations or codes which would promote effective governmental action or co-ordination in the prevention of equipment-related highway accidents or the mitigation of equipment-related highway safety problems.

ARTICLE V—VEHICULAR EQUIPMENT

(a) In the interest of vehicular and public safety, the commission may study the need for or desirability of the establishment of or changes in performance requirements or restrictions for any item of equipment. As a result of such study, the commission may publish a report relating to any item or items of equipment, and the issuance of such a report shall be a condition precedent to any proceedings or other action provided or authorized by this article. No less than sixty (60) days after the publication of a report containing the results of such study, the commission upon due notice shall hold a hearing or hearings at such place or places as it may determine.

(b) Following the hearing or hearings provided for in subdivision (a) of this article, and with due regard for standards recommended by appropriate professional and technical associations and agencies, the commission may issue rules, regulations or codes embodying performance requirements or restrictions for any item or items of equipment covered in the report, which in the opinion of the commission will be fair and equitable and effectuate the purposes of this compact.

(c) Each party state obligates itself to give due consideration to any and all rules, regulations and codes issued by the commission and hereby declares its policy and intent to be the promotion of uniformity in the laws of the several party states relating to equipment.

(d) The commission shall send prompt notice of its action in issuing any rule, regulation or code pursuant to this article to the appropriate motor vehicle agency of each party state and such notice shall contain the complete text of the rule, regulation or code.

(e) If the constitution of a party state requires, or if its statutes provide, the approval of the legislature by appropriate resolution or act may be made a condition precedent to the taking effect in such party state of any rule, regulation or code. In such event, the commissioner of such party state shall submit any commission rule, regulation or code to the legislature as promptly as may be in lieu of administrative acceptance or rejection thereof by the party state.

(f) Except as otherwise specifically provided in or pursuant to subdivisions (e) and (g) of this article, the appropriate motor vehicle agency of a party state shall in accordance with its constitution or procedural laws adopt the rule, regulation or code within six (6) months of the sending of the notice, and, upon such adoption, the rule, regulation or code shall have the force and effect of law therein.

(g) The appropriate motor vehicle agency of a party state may decline to adopt a rule, regulation or code issued by the commission pursuant to this article if such agency specifically finds, after public hearing on due notice, that a variation from the commission's rule, regulation or code is necessary to the public safety, and incorporates in such finding the reasons upon which it is based. Any such finding shall be subject to review by such procedure for review of administrative determinations as may be applicable pursuant to the laws of the party state. Upon request, the commission shall be furnished with a copy of the transcript of any hearings held pursuant to this subdivision.

ARTICLE VI—FINANCE

(a) The commission shall submit to the executive head or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that party state for presentation to the legislature thereof.

(b) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The total amount of appropriations under any such budget shall be apportioned among the party states as follows: one-third ($1/3$) in equal shares; and the remainder in proportion to the number of motor vehicles registered in each party state. In determining the number of such registrations, the commission may employ such source or sources of information as in its judgment present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the source or sources used in obtaining information concerning vehicular registrations.

(c) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with

funds available to it under Article III (h) of this compact, provided that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under Article III (h) hereof, the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its rules. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual reports of the commission.

(e) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

(f) Nothing contained herein shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

ARTICLE VII—CONFLICT OF INTEREST

(a) The commission shall adopt rules and regulations with respect to conflict of interest for the commissioners of the party states, and their alternates, if any, and for the staff of the commission and contractors with the commission to the end that no member or employee or contractor shall have a pecuniary or other incompatible interest in the manufacture, sale or distribution of motor vehicles or vehicular equipment or in any facility or enterprise employed by the commission or on its behalf for testing, conduct of investigations or research. In addition to any penalty for violation of such rules and regulations as may be applicable under the laws of the violator's jurisdiction of residence, employment or business, any violation of a commission rule or regulation adopted pursuant to this article shall require the immediate discharge of any violating employee and the immediate vacating of membership, or relinquishing of status as a member on the commission by any commissioner or alternate. In the case of a contractor, any violation of any such rule or regulation shall make any contract of the violator with the commission subject to cancellation by the commission.

(b) Nothing contained in this article shall be deemed to prevent a contractor for the commission from using any facilities subject to his control in the performance of the contract even though such facilities are not devoted solely to work of or done on behalf of the commission; nor to prevent such a contractor from receiving remuneration or profit from the use of such facilities.

ARTICLE VIII—ADVISORY AND TECHNICAL COMMITTEES

The commission may establish such advisory and technical committees as it may deem necessary, membership on which may include private

citizens and public officials, and may co-operate with and use the services of any such committees and the organizations which the members represent in furthering any of its activities.

ARTICLE IX—ENTRY INTO FORCE AND WITHDRAWAL

(a) This compact shall enter into force when enacted into law by any six (6) or more states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one (1) year after the executive head of the withdrawing state has given notice in writing of the withdrawal to the executive heads of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

ARTICLE X—CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

History: En. Sec. 1, Ch. 109, L. 1965.

Compiler's Notes

Nebraska, pursuant to Legislative Bill 923, has withdrawn from the Vehicle Equipment Safety Compact.

Title of Act

An act to establish a stable and uniform basis for interstate co-operation to provide a means to speed up the development and adoption of uniform standards for new or improved automotive safety equipment and to be known as the Vehicle Equipment Safety Compact; setting forth the basic purposes of the compact; defining certain terms used in the act; establishing a vehicle equipment safety commission and outlining the composition, duties and responsibilities of such commission; authorizing commission to establish salaries and retirement system for full-time employees; providing that commission will have an appointed commissioner from each party state with commission business expenses to be paid by compact commis-

sion; empowering commission to carry on "library type" research but prohibiting other type research and testing; authorizing commission to issue rules and regulations embodying performance requirements for items of equipment after conducting a needs study, publishing report of such study and holding hearings; providing that party states are not obligated to adopt rules, regulations or codes of commission but must consider them; providing that official adoption of rules, regulations or codes of the commission shall require affirmative action by the legislature of the state of Montana before such rules, regulations or codes shall be effective in Montana; requiring commission to submit to the budget director of Montana the budget of the commission, the costs of which are to be apportioned among the member states on the basis that each member state contribute equal moneys for one-third ($\frac{1}{3}$) of the total commission budget and that the remainder of the budget be apportioned according to the number of motor vehicles registered

in the party state; requiring that commission adopt rules and regulations to minimize conflicts of interest; authorizing commission to establish advisory and technical committees; providing for entry into and

withdrawal from compact; providing for construction and severability of act; repealing all acts or parts of acts in conflict herewith.

32-21-167. Legislative findings on equipment safety. The legislature finds that: (1) The public safety necessitates the continuous development, modernization and implementation of standards and requirements of law relating to vehicle equipment, in accordance with expert knowledge and opinion.

(2) The public safety further requires that such standards and requirements be uniform from jurisdiction to jurisdiction, except to the extent that specific and compelling evidence supports variation.

(3) The Montana highway patrol board, acting upon recommendations of the vehicle equipment safety commission and pursuant to the Vehicle Equipment Safety Compact, provides a just, equitable and orderly means of promoting the public safety in the manner and within the scope contemplated by this act.

History: En. Sec. 2, Ch. 109, L. 1965.

32-21-168. Equipment requirements continued in force. (a) Provisions of sections 32-21-114 to 32-21-161, inclusive, R. C. M., 1947, shall continue to be of force and effect. The approval of the legislature of the state of Montana is a condition precedent to the taking effect of any rule, regulation or code that may be issued or adopted by the commission.

History: En. Sec. 3, Ch. 109, L. 1965.

32-21-169. State commissioner on vehicle equipment safety commission. The commissioner of this state on the vehicle equipment safety commission shall be the highway patrol supervisor who shall serve during his continuance as such officer. The commissioner of this state appointed pursuant to this section may designate an alternate from among the officers and employees of his agency to serve in his place and stead on the vehicle equipment safety commission. Subject to the provisions of the compact and bylaws of the vehicle equipment safety commission, the authority and responsibilities of such alternate shall be as determined by the commissioner designating such alternate.

History: En. Sec. 4, Ch. 109, L. 1965.

32-21-170. Retirement of equipment safety commission employees. The public employees retirement board of Montana may make an agreement with the vehicle equipment safety commission for the coverage of said commission's employees pursuant to Article III (f) of the compact. Any such agreement, as nearly as may be, shall provide for arrangements similar to those available to the employees of this state and shall be subject to amendment or termination in accordance with its terms.

History: En. Sec. 5, Ch. 109, L. 1965.

32-21-171. Governmental agencies to co-operate with equipment safety commission. Within appropriations available therefor, the departments,

agencies and officers of the government of this state may co-operate with and assist the vehicle equipment safety commission within the scope contemplated by Article III (h) of the compact. The departments, agencies and officers of the government of this state are authorized generally to co-operate with said commission.

History: En. Sec. 6, Ch. 109, L. 1965.

32-21-172. Documents filed and notices given by equipment safety commission. Filing of documents as required by Article III (j) of the compact shall be with the Montana highway patrol board. Any and all notices required by commission bylaws to be given pursuant to Article III (j) of the compact shall be given to the commissioner of this state and his alternate.

History: En. Sec. 7, Ch. 109, L. 1965.

32-21-173. Equipment safety commission budgets. Pursuant to Article VI (a) of the compact, the vehicle equipment safety commission shall submit its budgets to the state budget director.

History: En. Sec. 8, Ch. 109, L. 1965.

32-21-174. Equipment safety commission accounts. Pursuant to Article VI (e) of the compact, the state examiner is hereby empowered and authorized to inspect the accounts of the vehicle equipment safety commission.

History: En. Sec. 9, Ch. 109, L. 1965.

Cross-References

Repealing Clause

Examiner's functions transferred, sec. 82A-903(3)(o).

Section 10 of Ch. 109, Laws 1965 repealed all acts and parts of acts in conflict therewith.

32-21-175. Governor as executive head for compact purposes. The term "executive head" as used in Article IX (b) of the compact shall, with reference to this state, mean the governor.

History: En. Sec. 11, Ch. 109, L. 1965.

32-21-176. Grazing livestock on highway unlawful. A person who owns or possesses livestock, may not permit the livestock to graze, remain upon or occupy a part of the right of way of a state highway running through cultivated areas, nor a part of the fenced right of way of a state highway, if in either case the highway has been designated by agreement between the highway commission and the secretary of transportation as a part of the national system of interstate and defense highways; nor a state highway, designated by agreement between the highway commission and the secretary of transportation as a part of the federal-aid primary system except as provided in section 32-1019.

History: En. Sec. 1, Ch. 95, L. 1951; amd. Sec. 1, Ch. 186, L. 1961; Sec. 32-1018, R. C. M. 1947; amd. and redes. 32-21-176 by Sec. 7, Ch. 316, L. 1974.

Compiler's Notes

Section 32-1019 referred to in this section has been renumbered 32-21-177 by Sec. 8, Ch. 316, Laws of 1974.

Amendments

The 1974 amendment renumbered this section; substituted "highway commission" for "state highway commission"; substituted "secretary of transportation"

for "secretary of commerce"; substituted "as provided in section 32-1019" for "as hereinafter provided" at the end of the section; and made minor changes in phraseology and punctuation.

32-21-177. Exclusions from preceding section. Section 32-1018 does not apply to the following:

(1) Livestock on state highways in charge of one (1) or more herders.

(2) The parts of fenced highways adjacent to open range where a highway device has not been installed to exclude range livestock.

(3) The parts of a state highway, a part of the federal-aid primary system, which the department of highways designates as being impracticable to exclude livestock. These portions of the highway shall be marked by proper signs in accordance with the department's manual and specifications for a uniform system of traffic-control devices.

History: En. Sec. 2, Ch. 95, L. 1951; amd. Sec. 2, Ch. 186, L. 1961; Sec. 32-1019, R. C. M. 1947; amd. and redes. 32-21-177 by Sec. 8, Ch. 316, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "Section 32-1018" for "This act" in the first sentence; substituted references to "department of highways" for "state highway commission" in subdivision (3); and made minor changes in phraseology and punctuation.

Compiler's Notes

Section 32-1018 referred to at the beginning of this section has been renumbered 32-21-176 by Sec. 7, Ch. 316, Laws of 1974.

32-21-178. Penalty for violating act. A person who violates section 32-21-176 is guilty of a misdemeanor and is subject to a fine of not less than five dollars (\$5), nor more than one hundred dollars (\$100), for each offense. In a civil action brought by the owner, driver or occupant of a motor vehicle, or by their personal representatives or assigns, or by the owner of livestock, for damages caused by collision between a motor vehicle and a domestic animal or animals on a highway, there is no presumption or inference that the collision was due to negligence on the part of the owner or the person in possession of the livestock, or the driver or owner of the vehicle.

History: En. Sec. 3, Ch. 95, L. 1951; amd. Sec. 3, Ch. 186, L. 1961; Sec. 32-1020, R. C. M. 1947; amd. and redes. 32-21-178 by Sec. 9, Ch. 316, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "section 32-21-176" for "this act" in the first sentence; and made minor changes in phraseology and punctuation.

32-21-179. Flagmen escorts—prohibitions against nighttime herding on public highways. A person who owns, controls or possesses livestock may not herd or drive a herd of livestock numbering more than ten (10) on an interstate or state primary highway designated as such by the highway commission unless the livestock are preceded and followed by flagmen escorts for the purpose of warning other highway users. Livestock may not be herded nor driven on an interstate or state primary

highway during nighttime as that term is defined in section 90-406, except in a case of emergency. In the case of an emergency, during the nighttime the flagmen escorts shall use adequate warning lights such as, but not limited to, portable lamps, lanterns, or rotating beacons. This section does not apply during daytime at posted livestock crossings on highways.

History: En. Sec. 1, Ch. 90, L. 1967; Sec. 32-1021, R. C. M. 1947; amd. and redes. 32-21-179 by Sec. 10, Ch. 316, L. 1974.

Amendments

The 1974 amendment renumbered this

section; substituted "highway commission" for "state highway commission" in the first sentence; inserted "In the case of an emergency" in the third sentence; and made minor changes in phraseology and punctuation.

32-21-180. Violations. A person who violates section 32-21-179 is guilty of a misdemeanor.

History: En. Sec. 2, Ch. 90, L. 1967; Sec. 32-1022, R. C. M. 1947; amd. and redes. 32-21-180 by Sec. 11, Ch. 316, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "section 32-21-179" for "this act"; and made minor changes in phraseology.

CHAPTER 22—HIGHWAY CODE—GENERAL PROVISIONS

- Section 32-2201. Legislative findings.
 32-2202. Legislative policy and intent.
 32-2203. General definitions.

32-2201. Legislative findings. The legislative assembly recognizes that safe and efficient highway transportation is of important interest to all of the people of the state and hereby determines and declares that:

(1) Inadequate highways, roads, and streets obstruct the free flow of traffic, increase costs of motor vehicle operation, endanger the health and safety of the citizens of the state, depreciate property values, and impede generally the economic progress of the state.

(2) The problems of establishing and maintaining adequate highways, roads, and streets, eliminating congestion, reducing accident frequency, providing parking facilities, and taking all necessary steps to insure safe and convenient transportation are urgent.

(3) Therefore, adequate and integrated systems of highways, roads, and streets are essential to the general welfare of the state of Montana.

(4) Providing adequate highway facilities is a proper public use and purpose, and that this act is necessary for the preservation of the public peace, health, and safety, for the promotion of the general welfare, and as a contribution to the national defense.

History: En. Sec. 1, Ch. 197, L. 1965.

Compiler's Note

This section and sec. 32-2202 were designated as Chapter 1 of the Highway Code, entitled "Legislative Intent."

Title of Act

An act to be known as the Montana Highway Code, for the codification and general revision of the laws pertaining to

highways, including planning, construction, and maintenance; amending sections 16-1004, 16-2008, 16-2010, 16-2011, 16-3302, 53-122, 84-1831, 94-3202, and 94-3565, R. C. M. 1947, and repealing sections 16-1004.1, 16-1118, 16-1127, 16-1128, 16-2009, 16-2201 through 16-2204, 16-3311, 16-3312, 32-102 through 32-107, 32-201 through 32-208, 32-302 through 32-314, 32-316, 32-401 through 32-413, 32-415, 32-416, 32-501 through 32-507, 32-509 through 32-526, 32-

601, 32-602, 32-701 through 32-711, 32-713 through 32-715, 32-901 through 32-905, 32-1002 through 32-1010, 32-1012 through 32-1014, 32-1016, 32-1301, 32-1601 through 32-1610, 32-1613 through 32-1618, 32-1620, 32-1622 through 32-1626, 32-1801 through 32-1804, 32-1901 through 32-1915, 32-2001 through 32-2010, 53-615 through 53-619, 53-621 through 53-623, 53-628 through 53-631, 53-634 through 53-639, 53-643, 84-1812 (1), 84-1812 (2), 84-1815, 84-1817, 89-821, 89-822, and 94-3201, R. C. M. 1947; providing for a savings clause and providing for the effective date of this act.

32-2202. Legislative policy and intent. Consistent with the foregoing determinations and declarations the legislative assembly intends:

(1) To place a high degree of trust in the hands of those officials whose duty it is, within the limits of available funds, to plan, develop, operate, maintain and protect the highway facilities of this state for present as well as for future use.

(2) To make the department of highways custodian of the federal-aid and state highways, and to impose similar responsibilities upon the boards of county commissioners with respect to county roads and upon municipal officials with respect to the streets under their jurisdiction.

(3) That the state shall have integrated systems of highways, roads, and streets, and that the department of highways, the counties and municipalities assist and co-operate with each other to that end.

(4) To provide sufficiently broad authority to enable the highway officials at all levels of government to function adequately and efficiently in all areas of their respective responsibilities, subject to the limitations of the constitution and the legislative mandate hereinafter imposed.

History: En. Sec. 2, Ch. 197, L. 1965;
amd. Sec. 68, Ch. 316, L. 1974.

State Highway

Where individuals involved in automobile collision sued city for negligent design, regulation, and maintenance of intersection, and city showed that intersection was part of state highway system, city was not liable. State ex rel. City of Helena v. District Court, — M —, 536 P 2d 1182.

Amendments

The 1974 amendment substituted "department of highways" for "state highway commission" in subdivisions (2) and (3); and made minor changes in phraseology.

32-2203. General definitions. Subject to additional definitions contained in this title which are applicable to specific chapters or sections, and unless the context otherwise requires, terms are defined as follows:

(1) "Abandonment"—Cessation of use of right of way (easement) or activity thereon with no intention to reclaim or use again. (Sometimes called "vacation.")

(2) "Auditor"—County auditor.

(3) "Board"—Board of county commissioners.

(4) "Bridge"—Includes rights of way or other interest in land, abutments, superstructures, piers, and approaches except dirt fills.

(5) "Clerk"—County clerk and recorder.

(6) "Commission"—Highway commission provided for in section 82A-706.1.

(7) "Committee"—Local improvement district committee of supervisors.

(8) "Condemnation"—Taking by exercise of the right of eminent domain.

(9) "Construction"—Supervising, inspecting, actual building, and all expenses incidental to the construction or reconstruction of a highway, including locating, surveying, and mapping, costs of right of way or other interests in land and elimination of hazards at railway-grade crossings.

(10) "Control of access"—The condition in which the right of owners or occupants of abutting land or other persons to access, light, air, or view in connection with a highway is fully or partially controlled by public authority.

(11) "County road"—Any public highway opened, established, constructed, maintained, abandoned, or discontinued in accordance with chapters 31 and 40 of this title.

(12) "Department"—Department of highways provided for in Title 82A, chapter 7.

(13) "Director"—Director of highways, a position provided for in section 82A-701.

(14) "Easement"—A right acquired by public authority to use or control property for a designated purpose.

(15) "Eminent domain"—The right of the state to take private property for public use.

(16) "Federal-aid highway"—Any public highway which is a portion of any of the federal-aid highway systems.

(17) "Federal-aid highway systems"—All of the systems named hereafter and their urban extensions.

(18) "Federal-aid interstate system"—That system of public highway selected by the commission in co-operation with adjoining states, subject to the approval of the secretary of commerce as provided in the Federal Highway Act, as amended.

(19) "Federal-aid primary system"—That system of connected public highways designated by the commission subject to the approval of the secretary of commerce, as provided in the Federal Highway Act, as amended.

(20) "Federal-aid secondary system"—That system of public highways not on the federal-aid primary or interstate systems selected by the commission in co-operation with the boards of county commissioners, subject to the approval of the secretary of commerce, as provided in the Federal Highway Act, as amended.

(21) "Fee simple"—An absolute estate or ownership in property including unlimited power of alienation.

(22) "Highway"—Includes rights of way or other interests in land, embankments, retaining walls, culverts, sluices, drainage structures, bridges, railroad-highway crossings, tunnels, signs, guardrails, and protective structures.

(23) "Highway," "road," "street"—Whether they appear together or separately or are preceded by the adjective "public," these are general terms denoting a public way for purposes of vehicular travel, including the entire area within the right of way.

(24) "Highway authority (ies)"—The entity (ies) at any level of government authorized by law to construct and maintain highways.

(25) "Maintenance"—Preservation of the entire highway, including surface, shoulders, roadsides, structures, and such traffic-control devices as are necessary for its safe and efficient utilization.

(26) "Public highways"—All streets, roads, highways, bridges, and related structures, which have been or shall be:

(a) Built and maintained with appropriated funds of the United States or the state or any political subdivision thereof.

(b) Dedicated to public use.

(c) Acquired by eminent domain.

(d) Acquired by adverse user by the public, jurisdiction having been assumed by the state or any political subdivision thereof.

(27) "Right of way"—A general term denoting land, property, or any interest therein, usually in a strip, acquired for or devoted to highway purposes.

(28) "State highway"—Any public highway planned, laid out, altered, constructed, reconstructed, improved, repaired, maintained, or abandoned by the department.

(29) "Superintendent"—County road superintendent.

(30) "Supervisor"—County road supervisor.

(31) "Surveyor"—County surveyor.

(32) "Toll bridge"—Any bridge constructed by the department, together with all appurtenances, additions, alterations, improvements, replacements, and the approaches thereto, lands used therefor, and improvements thereon.

(33) "Treasurer"—County treasurer.

History: En. Sec. 2-101, Ch. 197, L. 1965; amd. Sec. 69, Ch. 316, L. 1974.

Compiler's Note

This section was designated as Chapter 2 of the Highway Code, entitled "Definitions."

Amendments

The 1974 amendment substituted "contained in this title" in the first sentence for "contained in subsequent chapters of

this code"; deleted definitions of "Authority," and "Engineer"; substituted the present definition of "Commission" for "State highway commission"; substituted the present definition of "County road"; inserted definitions of "Department" and "Director"; substituted "department" for "commission" in subdivision (28) and for "Montana toll bridge authority" in subdivision (32); and made minor changes in phraseology and punctuation.

CHAPTER 23—CLASSIFICATION OF HIGHWAYS

Section 32-2301. Classification—highways and roads.
32-2302. Lewis and Clark highway.

32-2301. Classification—highways and roads. (1) Public highways of this state are classed as follows:

- (a) Federal-aid highways
- (b) State highways
- (c) County roads
- (d) City streets.

(2) All highways which are not designated, selected, or established, by the commission constructed or maintained by the department are county roads or city streets.

(3) County roads are those opened, established, constructed, maintained, changed, abandoned, or discontinued, in accordance with chapters 31 and 40 of this title.

(4) City streets are those public highways under the jurisdiction of municipal officials.

History: En. Sec. 3-101, Ch. 197, L. 1965; amd. Sec. 70, Ch. 316, L. 1974.

Compiler's Note

This chapter was designated as Chapter 3 of the Highway Code, entitled "Classification of Highways."

Amendments

The 1974 amendment substituted "designated, selected, or established, by the commission constructed or maintained by the department" in subsection (2) for "designated, selected, established, constructed, or maintained by the commission"; and made minor changes in phraseology and punctuation.

32-2302. Lewis and Clark highway. There is hereby established the Lewis and Clark highway. It shall be composed of the following existing routes: (1) From the Idaho state line west of Lolo Hot Springs, Montana, to the junction with U. S. highway ninety-three (93) at Lolo.

(2) Thence north from Lolo on U. S. highway ninety-three (93) to Missoula.

(3) Thence east from Missoula on U. S. highway twelve (12) and ten (10) to Garrison.

(4) Thence east from Garrison on U. S. highway twelve (12) through Forsyth and Baker to the North Dakota state line.

History: En. Sec. 3-102, Ch. 197, L. 1965.

CHAPTER 24—ASSENT TO FEDERAL AID—HIGHWAY COMMISSION —DEPARTMENT OF HIGHWAYS—POWERS AND DUTIES

Section 32-2401. Assent to federal-aid acts.

32-2402. [Transferred.]

32-2404. Commission members—bond—meetings.

32-2406. General power of department.

32-2407. Commission to designate highways—rules of department.

32-2407.1. State maintenance system.

32-2407.2. Highway department maintenance responsibility.

32-2407.3. Department maintenance agreements with local governments.

32-2407.4. Funding highway system maintenance.

32-2408. Designation of highways not located entirely within the state.

32-2409. Duties of commission and department—reports.

32-2410. Compilation of statistics—investigation—consultation.

32-2411. Agreements concerning effects of weight on highways.

32-2412. Seeding along highways.

32-2413. Description and plan of new highway or reconstructed or controlled access facility—recording.

32-2414. Relocation of utilities facilities—hearings—order.

32-2415. Relocation—costs.

32-2416. Relocation—definitions.

32-2419. Ports of entry and checking stations authorized.

32-2420. Checking stations required at major points of entry into state.

32-2421. Co-operation in use of ports of entry and checking stations.

32-2422. Purposes of act.

32-2423. Purposes for which federal funds to be expended.

- 32-2424. Extent of interest acquired.
 32-2425. Expenditure of funds.
 32-2425.1. Declaration of purpose.
 32-2426. Department to fence along state highways through open range where livestock a hazard—gates—"open range" defined.
 32-2427. Department to delineate open range hazard areas.
 32-2428. Procedure for classifying state highways in open range.
 32-2429. Department to fence where it has duty.

32-2401. Assent to federal-aid acts. (1) The legislative assembly, for and on behalf of the state of Montana, assents to the provisions of the Federal-Aid Road Act, approved July 1, 1916, and the Federal Highway Act, approved November 9, 1921, and all amendments thereto.

(2) The department may, for and on behalf of the state, enter into all contracts and agreements with the United States or any officer, department, or bureau thereof relating to the construction, reconstruction, repair, and maintenance of highways in the state.

(3) The department may make all rules necessary to comply with the provisions of the acts assented to, and all other acts granting aid for public highways, and to obtain for the state the full benefits of such acts.

(4) The department may do all other things necessary or required to carry out fully the co-operation contemplated by the acts of Congress assented to.

History: En. Sec. 4-101, Ch. 197, L. 1965; amd. Sec. 71, Ch. 316, L. 1974.

Compiler's Note

Chapters 24 to 27, inclusive, of this title (except secs. 32-2419 to 32-2421) were designated as Chapter 4 of the Highway Code, entitled "State Administration." Sections 32-2401 to 32-2418 herein were

designated as Part 1 of Chapter 4, entitled "Assent to Federal Aid. State Highway Commission, Powers and Duties."

Amendments

The 1974 amendment substituted "department" for "commission" throughout the section.

32-2402. [Transferred.]

Compiler's Notes

Section 72, Ch. 316, Laws of 1974 re-numbered this section as sec. 82A-706.1.

32-2403. Repealed.

Repeal

Section 32-2403 (Sec. 4-103, Ch. 197, L. 1965), relating to qualifications and ap-

pointments of members of the state highway commission, was repealed by Sec. 209, Ch. 316, Laws of 1974.

32-2404. Commission members—bond—meetings. (1) Each member of the highway commission shall give bond conditioned for the faithful performance of his duties in the sum of ten thousand dollars (\$10,000).

(2) The commission shall meet at least once each month for the purpose of transacting business.

History: En. Sec. 4-104, Ch. 197, L. 1965; amd. Sec. 73, Ch. 316, L. 1974.

Amendments

The 1974 amendment inserted "of the highway commission" after "Each member" in subsection (1); and rewrote sub-

section (2) which read "Each member shall receive twenty dollars (\$20) per diem for each day actually spent in the performance of his duties and his actual necessary traveling and other expenses in going to, attending, and returning from meetings of the commission. Each mem-

ber shall also receive his actual and necessary traveling and other expenses incurred in the discharge of such duties as may be required of him by a majority vote of the commission. In no event shall a member's per diem payments exceed two thousand dollars (\$2,000) in any one (1) year."

32-2405. Repealed.

Repeal

Section 32-2405 (Sec. 4-105, Ch. 197, L. 1965), relating to election of chairman and meetings of the state highway commission, was repealed by Sec. 209, Ch. 316, Laws of 1974.

32-2406. General power of department. The department may plan, lay out, alter, construct, reconstruct, improve, repair, maintain, and the commission may abandon highways on the federal-aid systems and state highways. The department may co-operate and contract with counties and municipalities to provide assistance in performing these functions on other highways and streets. The department may review and approve projects for the installation of public works on state highway right-of-way and authorize a county or municipality to let contracts related to such improvements.

History: En. Sec. 4-106, Ch. 197, L. 1965; amd. Sec. 74, Ch. 316, L. 1974; amd. Sec. 1, Ch. 283, L. 1977.

Amendments

The 1974 amendment substituted references to "department" for references to "commission" throughout the section; and made minor changes in phraseology.

The 1977 amendment added the last sentence.

Judicial Review

Where state highway commission conducted investigations and held hearings to determine number of interchanges and their location with respect to new interstate highway and nearby town, and agreed that one interchange was sufficient, district court abused its discretion in issuing writ of mandamus ordering commis-

sion to construct two such interchanges since commission complied with this section and its decision cannot be disturbed unless clear abuse of discretion is shown. *Erie v. State ex rel. State Highway Commission*, 154 M 150, 461 P 2d 207, distinguished in 155 M 39, 47, 466 P 2d 594.

Local Government Authority

Although the local government units are trustees of the streets within the city limits, when the street is also a state highway and also under the jurisdiction of the state highway department, the power of the city is diminished, and it may not construct improvements independently of and without the participation of the state highway department. *Palffy v. Director of Finance of City of Bozeman*, — M —, 540 P 2d 955.

32-2407. Commission to designate highways—rules of department.

(1) The commission shall designate such public highways in the state as shall be classed as the federal-aid primary system.

(2) The commission shall in co-operation with the board of county commissioners, select such public highways in the state as shall be classed as the federal-aid secondary system, taking into consideration the traffic count on those highways, the continuity of the highways in relation to the state highway systems as they may connect or tie into a unified system of federal-aid highways, and the taxable valuations which are affected by those public highways.

(3) The commission shall, in co-operation with adjoining states, select the routes of the federal-aid interstate system.

(4) The commission shall designate such public highways in the state as shall be classed as state highways, and the department shall

adopt necessary rules for the construction, repair, maintenance, and marking of state highways and bridges.

History: En. Sec. 4-107, Ch. 197, L. 1965; amd. Sec. 1, Ch. 201, L. 1967; amd. Sec. 75, Ch. 316, L. 1974.

Amendments

The 1967 amendment added the passage beginning, "taking into consideration" after "secondary system" at the end of subsection (2).

The 1974 amendment inserted "department" before "shall adopt" in subsection (4); and made minor changes in phraseology and punctuation.

Commission Regulations as Evidence

In action for wrongful death of driver of state highway truck while sanding road in snowstorm, it was error to admit into evidence Safety Manual adopted by highway commission and requiring that engineers, supervisors and foremen erect warning devices upon highway before beginning work since requirement imposed no duty upon deceased driver to erect warning devices. *Williams v. Maley*, 150 M 261, 434 P 2d 398.

32-2407.1. State maintenance system. The commission shall designate the following public highways in the state to be included in the state maintenance system:

- (1) the federal-aid interstate system as defined by 32-2203(18);
- (2) the federal-aid primary system as defined by 32-2203(19) and urban extensions thereto;
- (3) those portions of the federal-aid secondary system defined by 32-2203(20) and urban extensions thereto, as are designated by the commission;
- (4) other public highways or portions thereof which are not included within the systems above named, which are designated by the commission.

History: En. 32-2407.1 by Sec. 1, Ch. 390, L. 1977.

Title of Act

An act to designate a state maintenance system for public highways and to

provide additional funding therefor by increasing the tax on gasoline and special fuels by 1/4 cent per gallon; amending sections 84-1832.1 and 84-1847, R. C. M. 1947.

32-2407.2. Highway department maintenance responsibility. The department shall have the responsibility for maintenance of all public highways or portions thereof that it maintained on July 1, 1976.

History: En. 32-2402.2 by Sec. 2, Ch. 390, L. 1977.

32-2407.3. Department maintenance agreements with local governments. The department may enter into an agreement with a local governing body to maintain portions of public highways within its boundaries upon such terms and conditions as may be agreed upon.

History: En. 32-2402.3 by Sec. 3, Ch. 390, L. 1977.

32-2407.4. Funding highway system maintenance. For the purpose of funding the increased cost of maintaining the state highway system as designated in 32-2407.1, 1/4 cent per gallon of the special fuel tax collected under 84-1832.1 and 1/4 cent per gallon of the gasoline license tax collected under 84-1847 are allocated therefor.

History: En. 32-2407.4 by Sec. 6, Ch. 390, L. 1977.

32-2408. Designation of highways not located entirely within the state. (1) The commission may designate highways subject to improvement under the provisions of the Federal-Aid Road Act, approved July 11, 1916, the Federal Highway Act, approved November 9, 1921, and all amendments thereto, even though those highways are not located entirely and continuously within the boundaries of the state. The designations shall meet the following conditions:

(a) That the highway is on an approved federal-aid route and eligible for improvement under the federal-aid acts.

(b) That the location of a portion of the route outside the boundaries of the state is necessary because of natural geographical or physical conditions which make the construction of the highway within the state impossible or impracticable.

(c) That the portion of the route located outside the state does not connect with and is not a part of the state highway system of the adjoining state.

(2) The department may expend funds for the construction, reconstruction, engineering, administration, betterment, and maintenance of these designated highways. It may do all things necessary or required to carry out fully the co-operation contemplated under the federal-aid acts with regard thereto.

History: En. Sec. 4-108, Ch. 197, L. 1965; amd. Sec. 76, Ch. 316, L. 1974.

partment" for "commission" in subsection (2); and made minor changes in phraseology.

Amendments

The 1974 amendment substituted "de-

32-2409. Duties of commission and department—reports. (1) The commission may adopt rules necessary for its government.

(2) The department shall:

(a) Maintain and preserve the records of the commission in its office at the capitol.

(b) File and preserve copies of all plans, specifications, contracts, estimates, and official acts taken by it or by the commission.

(c) Prepare and submit to the governor on or before the fifteenth day of each month a report of work constructed, under construction, and proposed for construction, the progress made during the preceding month and recommendation for improvements and their estimated costs.

History: En. Sec. 4-109, Ch. 197, L. 1965; amd. Sec. 11, Ch. 93, L. 1969; amd. Sec. 77, Ch. 316, L. 1974.

The 1974 amendment inserted "The department shall" at the beginning of subsection (2); substituted "of the commission" for "its" in subdivision (2)(a); added "taken by it or by the commission" to subdivision (2)(b); deleted a final subdivision which read "Report as provided in section 2 [82-4002] of this act"; and made minor changes in phraseology, punctuation and style.

Amendments

The 1969 amendment, in subsection (5), substituted the specified reporting requirement for provisions detailing a required biennial report to the governor and the legislative assembly.

32-2410. Compilation of statistics—investigation—consultation. (1)

The department shall compile statistics regarding public highways throughout the state and collect all related information deemed expedient.

(2) It shall investigate various methods of construction adapted to different sections of the state, and decide the best methods of construction and maintenance of highways, bridges, and road markers.

(3) The department may be consulted at all reasonable times by county officers having care and authority over highways and bridges and shall advise them on construction, repair, alteration, or maintenance.

(4) The department shall furnish such information and advice as may be requested by persons interested in the construction, maintenance, and marking of public highways. It shall at all times lend its aid in promoting highway improvement throughout the state.

History: En. Sec. 4-110, Ch. 197, L. 1965; amd. Sec. 78, Ch. 316, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "commission" in subsection (1), and for references to commission and the state highway engineer in subsections (3) and (4); and made minor changes in phraseology.

32-2411. Agreements concerning effects of weight on highways. (1)

The department may contract with the United States or any state or group of states, or agencies thereof, or any nonprofit association, on a joint or co-operative basis, to study, analyze, or test the effects of weights on highways. Studies or tests shall seek solutions to the problems connected with the imposition of motor vehicle weights on highways.

(2) Studies or tests may be made either by designating existing highways or by constructing test strips, including natural resource roads.

History: En. Sec. 4-111, Ch. 197, L. 1965; amd. Sec. 79, Ch. 316, L. 1974.

Amendments

The 1974 amendment substituted "department" for "commission" in subsection (1).

32-2412. Seeding along highways. (1) After a federal-aid or state highway is constructed, the department shall seed borrow pits, slopes and shoulders to an adaptable perennial grass or combination of perennial grasses and legumes whenever establishment of perennial grass covers seem suitable. The seed shall be certified.

(2) The department shall seek joint recommendations and specifications as to time and method of seeding, fertilizing practices and grass species from the Montana extension service, the experiment station, and the soil conservation service.

(3) After a right of way in open range has been fenced pursuant to sections 32-2426 or 32-2427, the [department] may seed the land within the fence to a grass which may be cropped for hay, and may lease such lands or sell the right to take such hay to qualified persons.

History: En. Sec. 4-112, Ch. 197, L. 1965; amd. Sec. 6, Ch. 255, L. 1974; amd. Sec. 80, Ch. 316, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 255 and once by Ch. 316. Neither amendatory act mentioned

or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying changes made by both amendments.

The compiler substituted "department" for "commission" in subsection (3).

Amendments

Chapter 255, Laws of 1974, added subsection (3).

Chapter 316, Laws of 1974, substituted "department" for "commission" in subsections (1) and (2).

32-2413. Description and plan of new highway or reconstructed or controlled access facility—recording. (1) Whenever the department establishes the location, width, and lines of any new, reconstructed, or proposed highway, or the commission designates a road, street or highway as a controlled access facility, the department shall make a description and plan showing the center line and the established width, the immediate boundary lines of all private property over, across or through which the highway passes, the name or names of the owner of the property, the boundaries of that part of the private ownership included within the right of way of the highway, and the parcel number assigned to that part of each ownership included within the highway right of way, together with the project number under which the highway is or is proposed to be constructed or reconstructed.

(2) Reference to the project number, parcel number, and section, or quarter section, tract, block or lot from which the same has been subdivided is valid description of the parcel in all deeds given to or received from the state in which a parcel is transferred.

History: En. Sec. 4-113, Ch. 197, L. 1965; amd. Sec. 1, Ch. 131, L. 1969; amd. Sec. 81, Ch. 316, L. 1974.

Amendments

The 1969 amendment inserted reference to reconstructed highways in subsection (1) and added "the immediate boundary * * * to be constructed or reconstructed" and rewrote subsection (2) which formerly called for recording of description and plan and copy of commission resolution in a special book to be furnished to county clerk and recorder by the commission.

The 1974 amendment substituted "department" for "commission" at the beginning of subsection (1); inserted "or the commission" before "designates" in subsection (1); substituted "the department" for "its" before "shall make a description" in subsection (1); and made minor changes in phraseology and punctuation.

Effective Date

Section 2 of Ch. 131, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 27, 1969.

32-2414. Relocation of utilities facilities — hearings — order. (1) After appropriate hearings, the department may adopt reasonable regulations for the installation, construction, maintenance, repair, renewal, or relocation of tracks, pipes, mains, conduits, cables, wires, towers, poles, and other equipment and appliances (hereafter called "facilities") of a utility in, on, along, over, across, through or under a project on any of the federal-aid systems.

(2) The department shall give written notice of the place and time of a public hearing to determine the necessity of a relocation of facilities to all concerned not less than twenty (20) days before the hearing. Hearing may be waived in writing by the utility concerned or other interested parties.

(3) After the hearing, the department may determine that the facilities must be relocated. If so, the utility owning or operating the facilities shall relocate them in accordance with the order of the department. The utility and its successors and assigns may maintain and operate the relocated facilities, with the necessary appurtenances, in the new location.

History: En. Sec. 4-114, Ch. 197, L. 1965; amd. Sec. 82, Ch. 316, L. 1974.

partment" for "commission" throughout the section; and made minor changes in phraseology.

Amendments

The 1974 amendment substituted "de-

32-2415. Relocation—costs. Seventy-five per cent (75%) of all costs of relocation, including the costs of acquisition of new right of way, of dismantling, and of removal, shall be paid by the department as a cost of highway construction.

History: En. Sec. 4-115, Ch. 197, L. 1965; amd. Sec. 83, Ch. 316, L. 1974.

Amendments

The 1974 amendment substituted "department" for "commission."

32-2416. Relocation—definitions. For the purposes of the sections relating to relocation of utilities facilities, terms are defined as follows: (1) **Utility**—Includes publicly, privately, and co-operatively owned utilities.

(2) **Cost of relocation**—Includes the entire amount paid by the utility properly attributable to the relocation after deducting any increase in the value of the new facility and any salvage value derived from the old facility.

(3) **Federal-aid systems**—Includes the federal-aid primary system, the federal-aid secondary system, the federal-aid interstate system, and urban extensions of all of them.

(4) **Interstate system**—Includes any highway now included or which shall hereafter be included as a part of the National System of Interstate and Defense Highways, provided for in the Federal-Aid Highway Act of 1956 and supplements or amendments.

History: En. Sec. 4-116, Ch. 197, L. 1965.

32-2417, 32-2418. Repealed.

Repeal

Sections 32-2417 and 32-2418 (Secs. 4-117, 4-118, Ch. 197, L. 1965), relating to certification and payment of claims, and

prosecution for violations under this act, were repealed by Sec. 209, Ch. 316, Laws of 1974.

32-2419. Ports of entry and checking stations authorized. To augment and help make more efficient and effective the enforcement of certain laws of the state, the department shall establish temporary or permanent ports of entry or checking stations upon highways in the state at places which the department considers necessary and advisable.

History: En. Sec. 1, Ch. 137, L. 1965; amd. Sec. 84, Ch. 316, L. 1974.

Compiler's Note

Sections 32-2419 to 32-2421, inclusive, were not enacted as a part of the Highway Code. They did, however, become effective on the same date as the Highway Code, December 31, 1966.

Title of Act

An act authorizing and directing the state highway commission to establish temporary and permanent ports of entry and checking stations.

Amendments

The 1974 amendment substituted "department" for "state highway commission" in two places; and made minor changes in phraseology.

32-2420. Checking stations required at major points of entry into state. In addition to the power granted to it in section 32-2419, the department shall establish checking stations at convenient points on the major highways entering this state, and the checking stations shall be kept open at all times.

History: En. Sec. 2, Ch. 137, L. 1965; **amendment** for "state highway commission"; and made minor changes in phraseology.
amd. Sec. 85, Ch. 316, L. 1974.

Amendments

The 1974 amendment substituted "de-

32-2421. Co-operation in use of ports of entry and checking stations. The department shall co-operate with other agencies and political subdivisions of this state in the use of the ports of entry or checking stations, so that maximum use can be made of the facilities in enforcement of the laws of this state.

History: En. Sec. 3, Ch. 137, L. 1965; **Budget**
amd. Sec. 86, Ch. 316, L. 1974.

Amendments

The 1974 amendment substituted "department" for "state highway commission"; and made minor changes in phraseology.

Section 4, Ch. 137, Laws 1965, related to preparation of the budget for the 1967-1968 biennium and is omitted as temporary.

Effective Date

Section 5 of Ch. 137, Laws 1965 read "This act is effective December 31, 1966."

32-2422. Purposes of act. The purpose of sections 32-2422 through 32-2425 is:

(1) To promote the safety, convenience and enjoyment of travel on, and protection of the public investment in the highways of this state.

(2) To restore, preserve and enhance scenic beauty within the right of way of and adjacent to the highways.

(3) To entitle the state to receive and expend the three per cent (3%) nonmatching funds from the United States under Title 23, United States Code.

History: En. Sec. 1, Ch. 286, L. 1967; **enhancement of scenic beauty within and**
amd. Sec. 87, Ch. 316, L. 1974. **adjacent to federal-aid highways.**

Title of Act

An act providing for the acquisition of land for the restoration, preservation and

Amendments

The 1974 amendment inserted the introductory sentence; and made minor changes in phraseology and style.

32-2423. Purposes for which federal funds to be expended. The department may expend funds apportioned to the state under Public Law 89-285, Title III, Section 301 (a), October 22, 1965, 79 Statute 1032, for the following purposes:

(a) For landscape and roadside development within the rights of way of federal-aid highways of this state;

(b) For acquisition of interests in and improvement of strips of land necessary for the restoration, preservation, and enhancement of scenic beauty adjacent to the highways; and

(c) For acquisition and development of publicly owned and controlled rest and recreation areas and sanitary and other facilities within

or adjacent to federal-aid highway rights of way reasonably necessary to accommodate the traveling public.

History: En. Sec. 2, Ch. 286, L. 1967; amd. Sec. 88, Ch. 316, L. 1974. **Amendments** The 1974 amendment substituted "de-

partment" for "state highway commission" in the first paragraph; and made minor changes in phraseology.

The 1974 amendment substituted "de-

32-2424. Extent of interest acquired. The department may acquire the fee simple or any lesser estate or interest as determined by it to be reasonably necessary to accomplish the purposes of section 32-2422 through 32-2425. Acquisition may be made by gift, purchase, or exchange.

History: En. Sec. 3, Ch. 286, L. 1967; amd. Sec. 89, Ch. 316, L. 1974.

Amendments

The 1974 amendment substituted "department" for "commission"; and made minor changes in phraseology.

32-2425. Expenditure of funds. The department shall expend only nonmatching funds authorized under section 319 (b) of the Federal Highway Beautification Act of 1965, as amended, in carrying out the authority granted by sections 32-2422 through 32-2424.

History: En. Sec. 4, Ch. 286, L. 1967; amd. Sec. 90, Ch. 316, L. 1974.

Effective Date

Section 5 of Ch. 286, Laws 1967 read "This act shall be effective on and after July 1, 1967."

Amendments

The 1974 amendment substituted "department" for "commission"; and made minor changes in phraseology.

32-2425.1. Declaration of purpose. It is the purpose of this act to balance the tradition of the open range and the economic and geographic problems of raising livestock with the need for safer highways and the policy of taking all feasible measures to reduce the high incidence of traffic accidents and fatalities on Montana highways.

History: En. 32-2425.1 by Sec. 1, Ch. 255, L. 1974.

cording to the degree of traffic hazard created by livestock and to fence out livestock in the more hazardous areas; and amending sections 32-2426, 32-2427 and 32-2412, R. C. M. 1947.

Title of Act

An act directing the department of highways to classify open range areas ac-

32-2426. Department to fence along state highways through open range where livestock a hazard—gates—"open range" defined. (1) The department shall fence the right of way of any part of the state highway system that is constructed or reconstructed, after July 1, 1969, through open range where livestock present a hazard to the safety of the motorist. Where a fence is constructed, adequate stock gates or stock passes, as necessary, shall be provided to make land on either side of the highway usable for livestock purposes.

(2) For the purposes of this act, as used in sections 2 through 6 [32-2426 through 32-2429, 32-2412]:

(a) "Open range" means those areas of the state where livestock is raised and maintained in sufficient numbers as to constitute a significant

part of the local or county economy and where such animals graze and move about generally unrestrained by fences.

(b) A "high hazard area" is a segment of the primary highway system passing through open range where livestock moves on or across the highway often enough, in enough numbers, and with enough ease of access that such animals create a significant traffic safety hazard. Evidence bearing on whether animals on the highway pose a significant hazard includes, without limitation, past accident records, the opinions of persons qualified by experience to evaluate the relative safety of road conditions, and the terrain around the road.

(c) A "low hazard area" is a segment of the primary highway system passing through open range which is not a high hazard area.

(d) "Livestock" means cattle, sheep, swine, horses, mules, and goats.

History: En. Sec. 1, Ch. 311, L. 1969; amd. Sec. 2, Ch. 255, L. 1974; amd. Sec. 91, Ch. 316, L. 1974.

there is a sufficient safety hazard from livestock to warrant fencing.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 255 and once by Ch. 316. Neither amendatory act mentioned or entirely incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Title of Act

An act requiring the highway commission to fence highways that run through open range where livestock present a safety hazard to the motorist; defining open range for the purpose of this act; and authorizing the highway commission to determine where in open range areas

Amendments

Chapter 255, Laws of 1974, rewrote subsection (2) which read: "For the purpose of this act the term 'open range' means all private and public lands in the state of Montana not inclosed by a fence of not less than four (4) wires in good repair but does not include herd districts as created and defined by section 46-1501, R. C. M. 1947."

Chapter 316, Laws of 1974, substituted "Department" for "Commission" in the caption; substituted "department" for "highway commission" in subsection (1); substituted "July 1, 1969" for "the effective date of this act" in subsection (1); substituted "In section 32-2426 and 32-2427" for "For the purpose of this act" at the beginning of subsection (2); and made minor changes in phraseology and punctuation.

32-2427. Department to delineate open range hazard areas. The department shall, by December 31, 1975, delineate the open range areas through which the primary highway system runs and classify, pursuant to section 4 [32-2428], such areas as high hazard areas or low hazard areas.

History: En. Sec. 2, Ch. 311, L. 1969; amd. Sec. 3, Ch. 255, L. 1974; amd. Sec. 92, Ch. 316, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 255 and once by Ch. 316. The amendment by Ch. 255 incorporated the changes made by Ch. 316 and the text of the amendment by the former act is set out below.

Amendments

Chapter 255, Laws of 1974, rewrote this section which read: "The highway commission shall designate the open range areas where livestock present a sufficient safety hazard to the motorist to warrant fencing by the highway commission."

Chapter 316, Laws of 1974, substituted references to "department" in the caption and text of the section for references to "commission" and "highway commission."

32-2428. Procedure for classifying state highways in open range. The department shall study the primary highways in each county containing open range and, applying the criteria set out in section 32-2426, shall pro-

pose a division of such areas into high hazard and low hazard areas. The department shall publish an illustrated summary of its proposed classification of a county, in a newspaper of general daily or weekly circulation in that county, and the same publication shall give notice of a public hearing in the county within four (4) weeks. The department shall conduct this hearing on its proposed classification, and the record of the hearing shall include a statement of the department's reasons for its proposal as well as the views of the citizens interested in the proposal. Within four (4) weeks after the hearing, the department shall publish its final decision on the classification in the same format and newspaper used for the publication of the notice. For the purpose of judicial review, this final decision is a rule which may be reviewed by a district court as provided in section 82-4219.

History: En. 32-2428 by Sec. 4, Ch. 255, L. 1974.

32-2429. Department to fence where it has duty. The department shall erect a fence in every high hazard area as promptly as possible, and the cost of such construction is an expenditure for the enforcement of federal-aid highway safety programs. Gates, stock underpasses, water facilities, and cattle guards may be installed where necessary to make the land on either side of the highway usable for livestock purposes or where a public right of way intersects the state highway.

History: En. 32-2429 by Sec. 5, Ch. 255, L. 1974.

CHAPTER 25—STATE HIGHWAYS ENGINEER AND OTHER EMPLOYEES

Section 32-2504. Board of highway appeals—hearings.

32-2505. Personnel grievances—hearings.

32-2505.1. Grievance procedure.

32-2505.2. Board order to department.

32-2505.3. Enforcement of board order.

32-2501 to 32-2503. Repealed.

Repeal

Sections 32-2501 to 32-2503 (Secs. 4-201 to 4-203, Ch. 197, L. 1965; Sec. 1, Ch. 312, L. 1967), relating to appointment of a state highway administrator and other

employees, salaries of commission employees, and the establishment of the division of maintenance and control, were repealed by Sec. 209, Ch. 316, Laws of 1974.

32-2504. Board of highway appeals—hearings. The board of highway appeals, provided for in section 82A-704, shall hear grievances of personnel of the department of highways. An employee of the department who has a grievance and who has exhausted all other administrative remedies within the department, is entitled to a hearing before the board for a resolution of the grievance. A grievance of an employee means an employee's dissatisfaction concerning a serious matter of his employment based upon work conditions, supervision, or the result of an administrative action.

History: En. 32-2504 by Sec. 93, Ch. 316, L. 1974.

Ch. 316, Laws 1974. The board of highway appeals was abolished and its personnel grievance hearing functions transferred to a newly created board of personnel appeals. See secs. 82A-709 and 82A-1014.

Compiler's Notes

Section 82A-704, referred to above, was repealed by Sec. 3, Ch. 28, and Sec. 209,

32-2505. Personnel grievances—hearings. The board of personnel appeals, provided for in section 82A-1014, shall hear grievances of personnel of the department of highways. An employee of the department who has a grievance and who has exhausted all other administrative remedies within the department, is entitled to a hearing before the board of personnel appeals for a resolution of the grievance. A grievance of an employee means an employee's dissatisfaction concerning a serious matter of his employment based upon work conditions, supervision, or the result of an administrative action.

History: En. 32-2505 by Sec. 2, Ch. 28, L. 1974. **Repealing Clause** Section 3 of Ch. 28, Laws 1974 read "Sections 82A-704 and 82A-705, R. C. M. 1947, are repealed."

32-2505.1. Grievance procedure. (1) An employee of the department of highways, aggrieved by a serious matter of his employment based upon work conditions, supervision, or the result of an administrative action, is entitled to a hearing before the board of personnel appeals, under the provisions of a grievance procedure to be prescribed by the board, for resolution of the grievance.

(2) Direct or indirect interference, restraint, coercion, or retaliation by an employee's supervisor or the department of highways against an aggrieved employee because the employee has filed or attempted to file a grievance with the board shall also be basis for a grievance and shall entitle the employee to a hearing before the board for resolution.

History: En. 32-2505.1 by Sec. 1, Ch. 377, L. 1975. before the board of personnel appeals for employees of the department of highways; and repealing section 32-2505, R. C. M. 1947; and providing an effective date.

Title of Act
An act providing a grievance procedure

32-2505.2. Board order to department. If upon the preponderance of the evidence taken at the hearing the board is of the opinion that the employee is aggrieved, it may issue an order to the department of highways requiring such action of the department as will resolve the employee's grievance. In any hearing the board is not bound by statutory or common-law rules of evidence.

History: En. 32-2505.2 by Sec. 2, Ch. 377, L. 1975.

32-2505.3. Enforcement of board order. The board or the aggrieved employee may petition for the enforcement of the board's order and for appropriate temporary relief and shall file in the district court the record of the proceedings. Upon the filing of the petition, the district court shall have jurisdiction of the proceeding. Thereafter, the district court shall set the matter for hearing. After the hearing, the district court shall issue its order granting such temporary or permanent relief as it considers just and proper. No objection that has not been raised before the board shall be considered by the court unless the failure or neglect to raise the objection is excused because of extraordinary circumstances. The findings

of the board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

History: En. 32-2505.3 by Sec. 3, Ch. 377, L. 1975.

vided the act should be in effect from and after its passage and approval. Approved April 10, 1975.

Effective Date

Section 4 of Ch. 377, Laws 1975 pro-

CHAPTER 26—DISTRIBUTION AND APPORTIONMENT OF HIGHWAY CONSTRUCTION FUNDS

- Section 32-2601. Distribution and use of proceeds of gasoline dealers' license tax.
- 32-2603. Districts for apportionment of department funds.
- 32-2604. Construction or reconstruction of bridges.
- 32-2605. Apportionment of state construction funds.
- 32-2606. Apportionment of state funds to federal-aid primary highway system.
- 32-2607. Apportionment of state funds to federal-aid secondary highway system.
- 32-2607.1. Apportionment of construction funds.
- 32-2608. Secondary highway information.
- 32-2609. Apportionment of state funds to federal-aid interstate highway system.
- 32-2610. Increases in expenditures.
- 32-2611. Apportionment of state funds to federal-aid urban highways.
- 32-2612. Interim apportionment to match federal-aid funds.
- 32-2613. Allocation for safety construction programs.
- 32-2614. Replacement of bridges.
- 32-2615. Definition.
- 32-2616. Selection of routes.
- 32-2617. Allocation of funds.
- 32-2618. Apportionment of funds.
- 32-2619. Excess expenditures.
- 32-2620. Economic growth center defined.
- 32-2621. Department of highways shall determine centers.
- 32-2622. Allocation of funds.
- 32-2623. Apportionment of funds.
- 32-2624. Short title.
- 32-2625. Definition.
- 32-2626. Footpaths and bicycle trails to be established—funding.
- 32-2627. Duties of department of highways.

32-2601. Distribution and use of proceeds of gasoline dealers' license tax. (1) All money received in payment of license taxes under the Distributor's Gasoline License Tax Act, except those amounts paid out of the department of revenue's suspense account for gasoline tax refund, shall be used and expended as provided in this section. So much of that money on hand at any time as may be needed to pay highway bonds and interest thereon when due and to accumulate and maintain a reserve therefor, as provided in laws and in resolutions of the state board of examiners authorizing such bonds, shall be deposited in the highway bond account in the sinking fund established by 79-410. Subject to that provision, 9/10 of 1% of all money shall be deposited in the state park account and 3/10 of 1% of all money shall be deposited in a snowmobile account in the earmarked revenue fund. All of the remainder of the money shall be used and expended by the department of highways on the federal-aid highways in this state selected and designated under the Federal-Aid Act, approved July 11, 1916, and the Federal Highway Act, approved November 9, 1921, and all amendments thereto, and on highways leading from each county seat in the

state to the federal highway system of federal-aid roads where the county seat is not on the system and on the other roads which have been or may be authorized by the laws of Montana and for collection of the license taxes and the enforcement of the Montana highway code under Article VIII, section 6, of the constitution of this state. The department shall, in expending this money, carry forward construction from year to year, using the money expended through the matching up of federal-aid allotments to Montana upon the federal highway system in the various parts of the state in accordance with 32-2605 through 32-2607; nothing in this act conflicts with those federal-aid highway acts and the rules by which they are administered. The department may enter into cooperative agreements with the national park service and the federal highway administration for the purpose of maintaining national park approach roads in Montana.

(2) Money credited to the state park account in the earmarked revenue fund shall be used only for the creation, improvement, and maintenance of state parks where motor boating is allowed, except for the payment of refunds under 84-1855. The legislature hereby finds as a fact that of all the fuel sold in the state for consumption in internal combustion engines, not less than $\frac{9}{10}$ of 1% is used for propelling boats on waterways of this state.

(3) Money credited to the snowmobile account may be used only to develop and maintain facilities open to the general public at no admission cost, and to promote snowmobile safety. For the 2 years following July 1, 1977, 15% of the amount deposited in the snowmobile fund each year shall be used to promote snowmobile safety. Thereafter, 10% of the amount deposited in the snowmobile fund shall be used to promote snowmobile safety. The legislature finds that of all fuels sold in this state for consumption in internal combustion engines, not less than $\frac{3}{10}$ of 1% is used for propelling snowmobiles on public lands of this state.

History: En. Sec. 4-301, Ch. 197, L. 1965; amd. Sec. 1, Ch. 251, L. 1967; amd. Sec. 6, Ch. 356, L. 1971; amd. Sec. 13, Ch. 100, L. 1973; amd. Sec. 94, Ch. 316, L. 1974; amd. Sec. 8, Ch. 477, L. 1975; amd. Sec. 1, Ch. 372, L. 1977; amd. Sec. 1, Ch. 382, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 372 and once by Ch. 382. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

This chapter was designated as Part 3 of Chapter 4 of the Highway Code, entitled "Distribution and Apportionment of Highway Construction Funds."

Sections 1 to 7 of Ch. 477, Laws 1975 authorize the sale of general obligation highway bonds for the purpose of erecting and equipping a department of highways headquarters building and complex, and provide for the appropriation of a portion of net proceeds from gasoline taxation to a special sinking fund account

for the payment and security of such bonds.

Amendments

The 1967 amendment reduced the percentage deposited in the state park account and the percentage specified in the second sentence of the second paragraph from one per cent to six-tenths of one per cent; substituted "section 32-2605 through 32-2607" for "sections 4-308 through 4-310" in the third sentence (now the fifth sentence) of the first paragraph; and added "except for the payment of refunds as provided in section 84-1818, R. C. M. 1947" at the end of the first sentence of the second paragraph.

The 1971 amendment inserted new first, second and third sentences in the first paragraph; inserted "Subject to the foregoing provision" at the beginning of the fourth sentence of the first paragraph; deleted "except that amount paid out of the state board of equalization's suspense account for gasoline tax refund" after "All other money received" at the beginning of the fourth sentence of the first paragraph;

and made minor changes in phraseology and style.

The 1973 amendment deleted "pursuant to the provisions of article XII, section 1b of the constitution of the state of Montana" at the end of the former third sentence in the first paragraph. See 1975 amendment note.

The 1974 amendment substituted "Distributor's Gasoline License Tax Act" in the first sentence of subsection (1) for "the provisions of sections 84-1845 to 84-1855"; substituted "department of revenue's suspense account" in the first sentence of subsection (1) for "state board of equalization's suspense account"; substituted references to "department of highways" for references to "state highway commission" throughout the section; substituted "under article VIII, section 6 of the constitution" near the middle of subsection (1) for "pursuant to the provisions of article XII, section 1b of the constitution"; substituted "federal highway administration" near the end of subsection (1) for "national park service and the bureau of public roads"; substituted "under section 84-1855" in subsection (2) for "provided in section 84-1818, R. C. M. 1947"; and made minor changes in phraseology, punctuation and style.

The 1975 amendment deleted a former third sentence in subdivision (1) which read "The legislative assembly hereby finds as a fact that the principal and in-

terest and reserve requirements of bonds so authorized are a necessary cost of administering laws under which gasoline license taxes are derived, payment of highway obligations, and cost of construction, reconstruction, maintenance and repair of public highways, roads, streets, and bridges"; and made a minor change in phraseology.

Chapter 372, Laws of 1977, substituted "9/10 of 1%" in two places for "six-tenths of one per cent (.6%)."

Chapter 382, Laws of 1977, inserted "3/10 of 1% of all money shall be deposited in a snowmobile account" in the third sentence of subsection (1); added subsection (3); and made minor changes in phraseology, punctuation and style.

Repealing Clause

Section 9 of Ch. 477, Laws 1975 read "Chapter 377, Laws of Montana 1969, and sections 1 through 5, chapter 356, Laws of Montana 1971, are repealed."

Effective Dates

Section 7 of Ch. 356, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 15, 1971.

Section 10 of Ch. 477, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved April 18, 1975.

32-2602. Repealed.

Repeal

Section 32-2602 (Sec. 4-302, Ch. 197, L. 1965), relating to limitations on expenditures for administration, dissemination

of public information and engineering connected with highway construction, was repealed by Sec. 1, Ch. 251, Laws 1969, effective March 6, 1969.

32-2603. Districts for apportionment of department funds. All money available to the department for highway construction purposes shall be apportioned among these financial districts, each composed of the counties named:

- District 1. Lincoln, Flathead, Lake.
- District 2. Glacier, Toole, Liberty, Hill, Blaine.
- District 3. Phillips, Valley, Daniels, Sheridan, Roosevelt.
- District 4. McCone, Richland, Dawson, Prairie, Wibaux.
- District 5. Fergus, Garfield, Petroleum.
- District 6. Pondera, Teton, Chouteau, Cascade, Judith Basin.
- District 7. Lewis and Clark, Jefferson, Broadwater.
- District 8. Sanders, Mineral, Missoula, Ravalli, Granite, Powell.
- District 9. Beaverhead, Deer Lodge, Silver Bow, Madison.
- District 10. Park, Gallatin, Sweet Grass, Meagher, Wheatland.
- District 11. Golden Valley, Musselshell, Stillwater, Yellowstone, Carbon, Big Horn, Treasure.

District 12. Rosebud, Custer, Fallon, Powder River, Carter.

History: En. Sec. 4-306, Ch. 197, L. 1965; amd. Sec. 95, Ch. 316, L. 1974.

Amendments

The 1974 amendment substituted "department" for "commission" in the first sentence.

32-2604. Construction or reconstruction of bridges. (1) The department may allocate from state construction moneys available for the federal-aid highway system up to one million dollars (\$1,000,000) in any fiscal year for the construction or reconstruction of any major bridge or system of bridges on the primary or secondary highway systems. This may be done only when the use of regularly apportioned funds would prohibit or seriously delay the orderly and necessary highway construction program in the financial districts.

(2) When the department, as a part of its finding of public necessity, declares that a particular bridge should be constructed or reconstructed on a designated portion of the primary or secondary highway, the allocation may be made. The allocation may be expended:

(a) On primary bridges when the department's estimate of the cost of construction or reconstruction is in excess of five hundred thousand dollars (\$500,000).

(b) On secondary bridges when the department's estimate of the state's share of the cost of construction or reconstruction is in excess of the total estimated future regular apportionment of state construction moneys to the federal-aid secondary system of the county or counties for a period of three (3) years.

(3) The allocation shall be made from available state construction moneys for the primary system before the apportionment in section 32-2606, and for the secondary system before the apportionment in section 32-2607.

History: En. Sec. 4-307, Ch. 197, L. 1965; amd. Sec. 96, Ch. 316, L. 1974.

Amendments

The 1974 amendment substituted ref-

erences to department for references to commission in subsections (1) and (2), and references to engineer in subdivisions (2)(a) and (2)(b); and made minor changes in phraseology.

32-2605. Apportionment of state construction funds. Each fiscal year the department shall apportion available state construction funds to the various federal-aid highway systems which are required to match the amounts of federal aid available for expenditure on each respective system. The state's share of the cost of final judgments in court awards made to construction contractors on state highway construction projects during the previous fiscal year may be deducted from funds available prior to the apportionments provided in this section and this cost shall be credited to the accounts of the highway system, financial district, county or urban city involved as an offset to the charges made to the accounts as a result of the final judgment. The deductions may be made only when the amount of these judgments would prohibit or seriously impair the highway construction program in a financial district, county or urban city.

History: En. Sec. 4-308, Ch. 197, L. 1965; amd. Sec. 1, Ch. 283, L. 1971; amd. Sec. 97, Ch. 316, L. 1974; amd. Sec. 1, Ch. 31, L. 1975.

Amendments

The 1971 amendment added the proviso to the first sentence; and added the second sentence.

The 1974 amendment substituted "department" for "commission" in the first sentence; and made minor changes in phraseology and punctuation.

The 1975 amendment deleted "At the beginning of" before "Each fiscal year" in the first sentence.

Effective Date

Section 2 of Ch. 283, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 11, 1971.

32-2606. Apportionment of state funds to federal-aid primary highway system. (1) Each fiscal year the department shall determine the amount of incompleting mileage of the federal-aid primary system within each of the financial districts.

(a) As a basis for determination of incompleting mileage, the department shall compare the present condition of the system with the latest approved state standards. Any mileage failing to meet those standards shall be included in the determination as partially completed. The proportion of completion shall be determined by estimating the amount of work which must be performed to complete the highway.

(2) The department shall then compute the ratio between the incompleting mileage in each district and the total incompleting mileage of the federal-aid primary system in the state.

(3) The department shall then apportion available state construction funds to the federal-aid primary system in each district on the basis of the computed ratio.

History: En. Sec. 4-309, Ch. 197, L. 1965; amd. Sec. 98, Ch. 316, L. 1974; amd. Sec. 2, Ch. 31, L. 1975.

partment" for "commission" throughout the section; and made minor changes in phraseology.

The 1975 amendment deleted "At the beginning of" before "Each fiscal year" in subsection (1).

Amendments

The 1974 amendment substituted "de-

32-2607. Apportionment of state funds to federal-aid secondary highway system. (1) Each fiscal year the department shall apportion available state construction funds for the federal-aid secondary highway system among the financial districts. The proportion which each district shall receive shall be computed on the following basis:

(a) One-fourth ($1/4$) in the ratio of land area in each district to the total land area in the state.

(b) One-fourth ($1/4$) in the ratio of the rural population in each district to the total rural population in the state.

(c) One-fourth ($1/4$) in the ratio of the rural road mileage in each district to the total rural road mileage in the state.

(d) One-fourth ($1/4$) in the ratio of value of rural lands in each district to the total value of rural lands in the state.

(2) Funds apportioned to each district shall be further apportioned to each county in the district on the same basis, considering ratios of land area, rural population, rural road mileage, and value of rural lands. To the extent necessary to permit orderly programming and construction of projects, expenditures in any county may exceed the amount apportioned to that county to the extent of three (3) times the amount of the last

apportionment to the county. The amount of any excess expenditures shall be deducted from future apportionments to that county.

(3) For the purposes of this section, terms are defined as follows:

(a) Rural population—Total population less the population in cities over five thousand (5,000) persons and their unincorporated fringe urban areas as reported in the latest federal census.

(i) Federal census population figures shall be adjusted in the interim between censuses in accordance with the percentage of change in annual motor vehicle registration figures for each county.

(b) Rural road mileage—All road mileage outside of incorporated cities, exclusive of road mileage on the federal-aid primary highway system and the federal-aid interstate system.

(i) Rural road mileage reported by the road inventory of the department shall be used in determining rural road mileage.

(c) Value of rural lands—Includes the value of state-owned lands from which the state derives grazing, timber, and agricultural income.

(i) The basis for the value of rural lands shall be computed from the latest biennial report of the department of revenue.

(ii) The basis for the value of state-owned lands shall be computed from the latest figures on the total grazing, timber, and agricultural lands in each county contained in the latest biennial report of the department of state lands.

(iii) The average value of privately owned lands shall be the average value of state-owned lands, if the actual value is not available.

History: En. Sec. 4-310, Ch. 197, L. 1965; amd. Sec. 12, Ch. 391, L. 1973; amd. Sec. 99, Ch. 316, L. 1974; amd. Sec. 3, Ch. 31, L. 1975.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" at the end of subdivision (3)(c)(i).

The 1974 amendment substituted "department" for "commission" in subsection

(1) and subdivision (3)(b)(i); substituted "department of revenue" for "state department of revenue" in subdivision (3)(c)(i); substituted "department of state lands" for "commissioner of state lands and investments" in subdivision (3)(c)(ii); and made minor changes in phraseology.

The 1975 amendment deleted "At the beginning of" before "Each fiscal year" in subsection (1).

32-2607.1. Apportionment of construction funds. (1) Each fiscal year the department of highways shall apportion to each county available state construction funds for the purpose of matching federal-aid off-system road funds. Such apportionment shall be made in the same manner and on the same basis as provided in 32-2607.

(2) The board of county commissioners shall, in proposing projects to be constructed with off-system road funds, consult with the governing body of those cities with a population under 5,000 persons located within the county.

History: En. 32-2607.1 by Sec. 1, Ch. 79, L. 1977.

Title of Act

An act to apportion state construction funds to match federal-aid off-system road funds.

32-2608. Secondary highway information. On or before August 30 of each year, the department shall inform each board of county commissioners of:

(1) The total amount of secondary highway funds and the amount apportioned to each county.

(2) The location of proposed secondary highway projects when the information is available.

(3) Any other matters regarding secondary highway construction which the department considers advisable and of interest to the counties.

History: En. Sec. 4-311, Ch. 197, L. 1965; amd. Sec. 100, Ch. 316, L. 1974. department" for "commission" in two places; and made minor changes in phraseology.

Amendments

The 1974 amendment substituted "de-

32-2609. Apportionment of state funds to federal-aid interstate highway system. (1) Each fiscal year the department shall apportion available state construction funds for the federal-aid interstate highway system among the financial districts.

(2) The apportionment shall be based upon the ratio between the estimated cost of constructing or reconstructing the system in each district and the estimated cost of constructing or reconstructing the entire system within the state.

(3) The cost estimates to be used shall be those developed by the department in accordance with the Federal-Aid Highway Act of 1956, as amended.

History: En. Sec. 4-312, Ch. 197, L. 1965; amd. Sec. 101, Ch. 316, L. 1974; amd. Sec. 4, Ch. 31, L. 1975. department" for "commission" in two places; and made minor changes in phraseology.

Amendments

The 1974 amendment substituted "de-

The 1975 amendment deleted "At the beginning of" before "Each fiscal year" in subsection (1).

32-2610. Increases in expenditures. (1) The department may increase the expenditures made in a financial district to the extent of:

(a) Twenty-five per cent (25%) more than the amount of money allocated to the district in the latest year for the federal-aid primary system or the federal-aid secondary system.

(b) Three hundred per cent (300%) more than the amount of money allocated to the district in the latest year for the federal-aid interstate highway system.

(2) The allocation of available state construction funds to a district for the next succeeding fiscal year shall be decreased by an amount equal to any increased expenditures.

History: En. Sec. 4-313, Ch. 197, L. 1965; amd. Sec. 1, Ch. 290, L. 1973; amd. Sec. 102, Ch. 316, L. 1974; amd. Sec. 1, Ch. 318, L. 1974. 1974, once by Ch. 316 and once by Ch. 318. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Compiler's Notes

This section was amended twice in

Amendments

The 1973 amendment increased the percentage specified in subdivision (1) (a) from 15% to 25%.

Chapter 316, Laws of 1974, substituted "department" for "commission" in sub-

section (1) and made minor changes in phraseology.

Chapter 318, Laws of 1974, increased the percentage specified in subdivision (1)(b) from 100% to 300%.

32-2611. Apportionment of state funds to federal-aid urban highways.

(1) Each fiscal year the department shall apportion state construction funds available for matching federal-aid urban funds to the cities in the state over five thousand (5,000) population in the ratio of urban population in each city to the total urban population in all cities over five thousand (5,000) population in the state.

(2) For the purpose of this section, "urban population" is defined as population within the incorporated limits of cities over five thousand (5,000) population and that population within unincorporated urban fringe areas delineated and reported in the latest federal census.

(3) To the extent necessary to permit orderly programming and construction of projects, expenditures in any city may exceed the amount apportioned to that city. The amount of any excess expenditures shall be deducted from future apportionments to that city.

History: En. Sec. 4-314, Ch. 197, L. 1965; amd. Sec. 103, Ch. 316, L. 1974; amd. Sec. 5, Ch. 31, L. 1975.

partment" for "commission" in subsection (1); and made minor changes in phraseology.

Amendments

The 1974 amendment substituted "de-

The 1975 amendment deleted "At the beginning of" before "Each fiscal year" in subsection (1).

32-2612. Interim apportionment to match federal-aid funds. During the interim between legislative sessions, the department of highways is hereby delegated power and authority to develop formulas to apportion state construction funds in an equitable manner consistent with the intent of this act to match federal-aid funds for highway systems or purposes not enumerated in this act. Such apportionment formulas shall be valid only until approved, modified or rejected by the next succeeding legislative session.

History: En. 32-2612 by Sec. 1, Ch. 402, L. 1973.

highways to apportion state construction funds during the interim between legislative sessions.

Title of Act

An act to permit the department of

32-2613. Allocation for safety construction programs. Each fiscal year the department of highways shall allocate available state construction funds to match federal-aid highway funds made available by the Federal-Aid Highway Act of 1973 for the following safety construction programs: rail-highway crossings, high hazard locations, elimination of roadside obstacles, safer roads demonstration and pavement marking demonstration. Such allocation shall be made from available state construction moneys before the apportionments provided for in sections 32-2606, 32-2607 and 32-2611, R. C. M. 1947.

History: En. 32-2613 by Sec. 1, Ch. 216, L. 1974; amd. Sec. 6, Ch. 31, L. 1975.

Title of Act

An act to allocate state construction

funds to match federal-aid highway funds available for safety construction programs.

Amendments

The 1975 amendment substituted "Each

fiscal year" at the beginning of the section for "Annually beginning July 1, 1974, and at the beginning of each fiscal year thereafter."

32-2614. Replacement of bridges. (1) Whenever funds are made available under the Federal-Aid Highway Act for the replacement of bridges, the department may allocate from state construction moneys such moneys as are necessary to match the available federal funds. Such allocation shall be made from available state construction moneys before the apportionments provided for in 32-2606, 32-2607, and 32-2611.

(2) Whenever such state construction moneys are so allocated, the amount so allocated may not be deducted from future apportionments to the financial district or city.

History: En. 32-2614 by Sec. 1, Ch. 102, L. 1974; amd. Sec. 1, Ch. 78, L. 1977.

Title of Act

An act to allocate state construction funds to match federal-aid highway funds available for the replacement of bridges, and providing for the apportionment of such state construction funds.

Amendments

The 1977 amendment substituted "may

not be deducted" for "shall be deducted" in subsection (2); deleted former subdivision (2)(a) reading "if the moneys are allocated for the replacement of a bridge located on the primary or urban system, the amount shall be deducted over a period of five (5) years"; deleted former subdivision (2)(b) reading "if the moneys are allocated for the replacement of a bridge located on the secondary system, the amount shall be deducted over a period of ten (10) years"; and made minor changes in punctuation and style.

32-2615. Definition. For the purposes of this section "priority primary routes" are defined as those high traffic sections of highways on the federal aid primary system which connect to the interstate system.

History: En. 32-2615 by Sec. 1, Ch. 106, L. 1974.

Title of Act

An act to allocate state construction

funds to match federal-aid highway funds available for priority primary routes; and providing for the apportionment of such state construction funds.

32-2616. Selection of routes. Such routes shall be selected by the department, in consultation with appropriate local officials, subject to the approval of the secretary of transportation for priority of improvement to supplement the service provided by the interstate system by furnishing needed adequate traffic collection and distribution facilities.

History: En. 32-2616 by Sec. 2, Ch. 106, L. 1974.

32-2617. Allocation of funds. Annually, beginning July 1, 1974, and at the beginning of each fiscal year thereafter, the department shall allocate available state construction funds for matching federal aid priority primary route funds. Such allocation shall be made from available state construction moneys before the apportionments provided for in sections 32-2606, 32-2607 and 32-2611, R. C. M. 1947.

History: En. 32-2617 by Sec. 3, Ch. 106, L. 1974.

32-2618. Apportionment of funds. Each fiscal year the department shall apportion available state construction funds among the approved priority primary routes. This apportionment shall be based on the ratio between the estimated cost of constructing or reconstructing each selected route and the estimated cost of constructing or reconstructing all then approved priority primary routes.

History: En. 32-2618 by Sec. 4, Ch. 106, L. 1974; amd. Sec. 7, Ch. 31, L. 1975.

Amendments

The 1975 amendment deleted "at the beginning of" before "Each fiscal year"; and made a minor change in phraseology.

32-2619. Excess expenditures. To the extent necessary to permit orderly programming and construction of projects, expenditures on any route may exceed the amount apportioned to that route. The amount of any such excess expenditures shall be deducted from future apportionments to that route.

History: En. 32-2619 by Sec. 5, Ch. 106, L. 1974.

32-2620. Economic growth center defined. For the purposes of this section an "economic growth center" is defined as an area of population of less than one hundred thousand (100,000) which has been recommended for designation as such by the governor of Montana and approved by the secretary of transportation of the United States.

History: En. 32-2620 by Sec. 1, Ch. 105, L. 1974.

funds to match federal-aid highway funds available for economic growth centers; and providing for the apportionment of such state construction funds.

Title of Act *Act to allocate state construction funds to match federal-aid highway funds available for economic growth centers; and providing for the apportionment of such state construction funds.*
An act to allocate state construction

32-2621. Department of highways shall determine centers. For the purposes of this section the department of highways is authorized to determine and delineate the area influenced by designated economic growth centers. In so doing it shall take into account relevant geographic, economic, educational and recreational factors. The department is also authorized to determine and delineate those portions of existing highways which need to be upgraded to accommodate the existing and future needs of the traveling public.

History: En. 32-2621 by Sec. 2, Ch. 105, L. 1974.

32-2622. Allocation of funds. Each fiscal year the department shall allocate available state construction funds to match federal-aid highway funds made available for economic growth center development highways. Such allocation shall be made from available state construction moneys before the apportionments provided in sections 32-2606, 32-2607 and 32-2611, R. C. M. 1947.

History: En. 32-2622 by Sec. 3, Ch. 105, L. 1974; amd. Sec. 8, Ch. 31, L. 1975.

fiscal year" for "Annually, beginning July 1, 1974, and at the beginning of each fiscal year thereafter."

Amendments

The 1975 amendment substituted "Each

32-2623. Apportionment of funds. Each fiscal year the department shall apportion state construction funds among the approved economic growth centers as follows:

(1) The allocation for the 1974 fiscal year shall be the ratio of the number of miles of highways that need upgrading in existence on July 1, 1973, on the primary and urban systems in each approved growth center's area of influence to the total number of miles in all approved growth centers' area of influence that need upgrading.

(2) Thereafter, the allocation shall be in the ratio of the number of miles in existence on July 1 of a fiscal year on the primary, secondary and urban systems in each approved growth center's area of influence that need upgrading to the total number of miles in all approved growth centers' area of influence that need upgrading.

(3) To the extent necessary to permit orderly programming and construction of projects, expenditures in any approved growth center may exceed the amount apportioned to the growth center. The amount of any such excess expenditures shall be deducted from future apportionments to that growth center.

History: En. 32-2623 by Sec. 4, Ch. 105, L. 1974; amd. Sec. 9, Ch. 31, L. 1975.

Amendments

The 1975 amendment deleted "At the beginning of" before "Each fiscal year"; and made minor changes in phraseology.

32-2624. Short title. This act may be cited as the "Montana Traffic Safety Act of 1975."

History: En. 32-2624 by Sec. 1, Ch. 544, L. 1975.

Title of Act

An act to be known as the Montana

Traffic Safety Act of 1975; providing for the construction of footpaths and bicycle trails along highways.

32-2625. Definition. As used in this act, "bicycle trail" means a publicly owned and maintained lane or way designated and signed for use as a bicycle route.

History: En. 32-2625 by Sec. 2, Ch. 544, L. 1975.

32-2626. Footpaths and bicycle trails to be established—funding. (1) Out of the funds received by the highway commission or by any county or city from the state highway commission earmarked revenue fund, reasonable amounts shall be expended as necessary for the establishment of footpaths and bicycle trails. Footpaths and bicycle trails may be established and extended to the nearest city or town or termination point of the highway or road wherever a highway, road, or street is being constructed, reconstructed, or relocated. In addition, footpaths and bicycle trails shall be established along all streets under state jurisdiction. Funds received from the earmarked revenue fund may also be expended to maintain footpaths and bicycle trails along other highways, roads, and streets and in parks and recreation areas where the construction would enhance traffic safety and convenience. Footpaths and bicycle trails shall be constructed along all sections of the national defense interstate highway system within a reasonable time after the completion of that system.

(2) Footpaths and trails are not required to be established under subsection (1) of this section:

(a) if the cost of establishing the paths and trails would be excessively disproportionate to the need or probable use; or

(b) where sparsity of population, other available ways, or other factors indicate an absence of any need for the paths and trails.

(3) The amount expended by the state highway commission or by a city or county as requested or permitted by this section shall never in any one (1) fiscal year be less than three-quarters of one per cent (0.75%) of the amount appropriated to the department of highways from the earmarked revenue fund for the construction program, maintenance program, and preconstruction program.

History: En. 32-2626 by Sec. 3, Ch. 544, L. 1975.

32-2627. Duties of department of highways. The establishment of paths and trails and the expenditure of funds as authorized by this act is for the promotion of traffic safety on the highways, roads, and streets of the state. The highway commission shall, when requested, provide technical assistance and advice to cities and counties in carrying out the purpose of this act. The department of highways shall recommend construction standards for footpaths and bicycle trails. The department shall provide a uniform system of signing footpaths and bicycle trails which shall apply to paths and trails under the jurisdiction of the commission and cities and counties. The commission and cities and counties shall restrict the use of footpaths and bicycle trails under their jurisdiction to pedestrians and nonmotorized vehicles to the maximum possible extent, except that the commission, in co-operation with local governments, may authorize the operation of snowmobiles on designated portions of bicycle trails and footpaths when snow conditions permit.

History: En. 32-2627 by Sec. 4, Ch. 544, L. 1975.

CHAPTER 27—MONTANA TOLL BRIDGE AUTHORITY

(Repealed—Section 209, Chapter 316, Laws of 1974)

32-2701 to 32-2716. Repealed.

Repeal Montana toll bridge authority were repealed by Sec. 209, Ch. 316, Laws of 1974.
Sections 32-2701 to 32-2716 (Secs. 4-401 to 4-416, Ch. 197, L. 1965), relating to the

CHAPTER 28—BOARD OF COUNTY COMMISSIONERS RESPONSIBILITY FOR COUNTY ROADS

- Section 32-2801. Powers and duties of county commissioners respecting county roads.
32-2802. Right of way—contracts—control of traffic.
32-2803. Plat books—surveyor—employees.
32-2805. Inspection of roads and construction work—compensation.
32-2806. Purchase of machinery and materials.
32-2807. Use of county road machinery.
32-2808. Width of road.
32-2809. Highways to follow subdivision or section lines.

- 32-2810. Auto passes excluding livestock.
- 32-2811. Auto passes on county roads.
- 32-2812. Limit on amount expended in road district.
- 32-2813. Reseeding of right of way areas.
- 32-2814. County supervisors to control weeds and exterminate weed seeds—charges.
- 32-2815. Board and others to furnish information.
- 32-2816. Designation of emergency area near construction project.
- 32-2817. Notice of designation of emergency area—removal of designation.
- 32-2818. Livestock not to run at large in emergency area.
- 32-2819. Impounding of animals at large—notice to owner—fees and mileage.
- 32-2820. Penalty for violations.

32-2801. Powers and duties of county commissioners respecting county roads. (1) Each board of county commissioners has general supervision over the county roads within the county. The board may, in its discretion, divide the county into suitable road districts, and place each district in charge of a competent road supervisor. The board shall order and direct each supervisor in the work to be done in his district. If the board does not divide the county into districts, the county itself shall constitute one road district.

(2) Each board shall survey, view, lay out, record, open, work, and maintain county roads which are petitioned for by freeholders. Guideposts shall be erected.

(3) Each board shall discontinue or abandon county roads when freeholders properly petition therefor.

(4) Each board may, in its discretion, do whatever may be necessary for the best interest of the county roads and the road districts.

(5) Each board shall make reports relating to roads under its supervision which are requested by the department of highways.

History: En. Sec. 5-101, Ch. 197, L. 1965; amd. Sec. 104, Ch. 316, L. 1974.

“Board of County Commissioners Responsibility for County Roads.”

Compiler's Note

Chapters 28 to 31, inclusive, of this title were designated as Chapter 5 of the Highway Code, entitled “County Administration.” This chapter was designated as Part 1 of Chapter 5, entitled

Amendments

The 1974 amendment substituted “department of highways” for “commission” in subsection (5); and made minor changes in phraseology and punctuation.

32-2802. Right of way—contracts—control of traffic. (1) Each board shall contract, agree for, purchase, or otherwise lawfully acquire right of way for county roads over private property. It may institute proceedings under sections 93-9901 to 93-9926, paying for such right of way from the county road fund. Cattle guards, appurtenances, and gates may be constructed and maintained adjacent to county roads.

(2) Subject to the limitations and restrictions provided in the codes for the letting of contracts, each board may let by contract the construction, maintenance and improvement of county roads, and the construction, maintenance, or repair of bridges when the amount of work to be done exceeds the sum of one thousand dollars (\$1,000).

(3) Subject to the limitations and restrictions provided in the constitution and codes, each board may issue bonds upon the faith and

credit of the county for the construction or improvement of county roads, state highways, and bridges.

(4) Each board may, in its discretion, limit or forbid, temporarily, any traffic or class of traffic on the county roads or any part thereof, when it is necessary in order to preserve or repair such roads.

History: En. Sec. 5-102, Ch. 197, L. 1965.

32-2803. Plat books—surveyor—employees. (1) Each board may, in its discretion, order the county surveyor, or some other surveyor if the county surveyor is incompetent, to prepare suitable plat books. Each board shall have recorded in it with the county clerk a full description of each county road, showing each course by bearing and distance, a full and complete map of the road, and a record of all proceedings with reference to the road.

(2) Each board may, in its discretion, employ a competent road supervisor, who shall serve during the pleasure of the board. Under the direction and control of the board he shall:

(a) Prescribe the times and places for all work to be done on the county roads.

(b) Report any delinquency or inefficiency of any person employed on any road.

(c) Perform other duties which are prescribed by the board.

(3) In any county in which the county surveyor is not paid an annual salary, he may by agreement be employed by the board to perform the services of road supervisor. He shall not be paid for any duty otherwise required by law to be performed by him as county surveyor.

(4) In counties without a county surveyor, each board may appoint a county road superintendent. He shall have such duties, powers, and responsibilities as are set forth in chapter 30 of this title.

History: En. Sec. 5-103, Ch. 197, L. 1965; amd. Sec. 2, Ch. 274, L. 1967; amd. Sec. 105, Ch. 316, L. 1974.

Amendments

The 1967 amendment added "In counties without a county surveyor" at the beginning of the first sentence of subsection (4), and added "chapter 30 of this title" within parentheses at the end of the section.

The 1974 amendment deleted a subdivision (3)(a) stating that nothing in the section should be construed to alter or repeal "sections 5-308 and 5-309 of this chapter"; and made minor changes in phraseology.

Effective Date

Section 3 of Ch. 274, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 2, 1967.

32-2804. Repealed.

Repeal

Section 32-2804 (Sec. 5-104, Ch. 197, L. 1965), relating to county contracts with

the state or federal government for the construction of roads, was repealed by Sec. 1, Ch. 265, Laws 1973.

32-2805. Inspection of roads and construction work—compensation.

(1) The board may direct the county surveyor or some member or members of the board to inspect the condition of any road. It may direct such persons to inspect any work, being done under contract or other-

wise, which is under the direction, supervision, or control of the board. Such inspections may be made before any work is commenced, during its progress, or after completion and before payment.

(2) The person or persons making such inspections shall receive the sum of thirty-three dollars (\$33) per day and actual expenses if he receives no other compensation for that day and is not on an annual salary. The claims shall be audited and allowed in the same manner as other claims against the county.

(3) Proper minute entries of such inspections must be made by the surveyor or board member or members at the next regular meeting of the board.

History: En. Sec. 5-105, Ch. 197, L. 1965; amd. Sec. 1, Ch. 178, L. 1967; amd. Sec. 1, Ch. 446, L. 1973.

Amendments

The 1967 amendment increased payments to county surveyors and members

of county boards of commissioners under subsection (2) from \$15 to \$20 per day.

The 1973 amendment increased the daily rate specified in subsection (2) from \$20 to \$33; and inserted "if he receives no other compensation for that day and is not on an annual salary" at the end of the first sentence in subsection (2).

32-2806. Purchase of machinery and materials. (1) Out of the county road fund, each board may:

(a) Purchase and operate grading and other machinery necessary or desirable for the improvements of the county roads.

(b) Acquire deposits or quarries of suitable road-building material by purchase, condemnation, or lease.

(2) Each board may also acquire such road-building material by gift.

(3) Any crushed rock or gravel not directly used or needed by the county in the construction, repair, or maintenance of its roads, may be sold by the board at not less than actual cost of production to any person, firm, or corporation desiring to use it upon any public street or highway in the county. The proceeds of any such sale shall be paid into the county road fund.

History: En. Sec. 5-106, Ch. 197, L. 1965.

32-2807. Use of county road machinery. Each board may, in its discretion, authorize and permit the use of any county highway or road machinery or equipment when not in use in any district, in connection with the construction, repair and maintenance of streets, avenues and alleys within any incorporated city or town of four thousand (4,000) population or less located in the county.

History: En. Sec. 5-107, Ch. 197, L. 1965.

32-2808. Width of road. (1) The width of all county roads, except bridges, alleys, or lanes, must be sixty (60) feet unless a greater or smaller width is ordered by the board on petition of an interested person.

(2) The width of all private highways and byroads, except bridges, must be at least twenty (20) feet.

(3) Nothing in this section shall be construed as increasing or decreasing the width of either kind of highway or road already established or used as such.

History: En. Sec. 5-108, Ch. 197, L. 1965. apply only to public roads which were laid out by official act of proper public officials and was never intended to apply to prescriptive easements. State v. Portmann, 149 M 91, 423 P 2d 56.

Applicability

Statute was intended by legislature to

32-2809. Highways to follow subdivision or section lines. County roads must be laid out and opened when practicable upon subdivision or section lines. However, when public purposes shall be best served thereby, roads may be laid out in diagonal lines.

History: En. Sec. 5-109, Ch. 197, L. 1965.

32-2810. Auto passes excluding livestock. Where a county road connects with a state or federal highway which is fenced on both sides, the board may construct and maintain extensions of the fence across the right of way of the intersecting county road. The board shall construct a pass which will permit passage of vehicles but will prevent loose livestock from passing onto the state or federal highway. In the extensions of the fence, there shall be maintained a gate to permit the passage of livestock and vehicles.

History: En. Sec. 5-110, Ch. 197, L. 1965.

32-2811. Auto passes on county roads. Each board may construct on county roads passes which shall permit the travel of vehicles but which shall prevent the passage of loose livestock. Where necessary, gates shall be maintained to permit the passage of livestock. Such passes may be removed when, in the judgment of the board, the need therefor no longer exists.

History: En. Sec. 5-111, Ch. 197, L. 1965.

32-2812. Limit on amount expended in road district. The expenditures in any road district for labor and equipment, together with the compensation to be paid to the supervisor, shall not exceed the sum apportioned quarterly by the board to that district. However, if that sum is not sufficient, the board may appropriate any amount from the county road fund necessary for the use of such district. The full amount of all road taxes collected in remote districts shall be expended annually by the county commissioners on the roads within such districts.

History: En. Sec. 5-112, Ch. 197, L. 1965.

32-2813. Reseeding of right of way areas. (1) Whenever the natural sod cover on right of way areas is disturbed by construction of county roads, irrigation ditches, drain ditches, or otherwise, the board shall require that such disturbed areas be seeded to an adaptable perennial

grass or combination of perennial grasses and legumes. Every effort shall be made to establish a sod cover on the disturbed area.

(2) All seed used shall meet certified standards.

(3) Time and method of seeding, fertilizing practices, and grass species shall be those recommended by the Montana extension service.

History: En. Sec. 5-113, Ch. 197, L. 1965.

32-2814. County supervisors to control weeds and exterminate weed seeds—charges. The board of weed control and weed seed extermination supervisors shall control noxious weeds on the county roads. If the department does not control noxious weeds on state and federal highways in any county, the supervisors shall control them. Upon presentation by the supervisors of a verified account of the expenses incurred, the costs of control shall be paid by the department.

History: En. Sec. 5-114, Ch. 197, L. 1965; amd. Sec. 106, Ch. 316, L. 1974. department" for "commission" in two places; and made a minor change in phraseology.

Amendments

The 1974 amendment substituted "de-

32-2815. Board and others to furnish information. The board and road supervisor of a county, and all other officers who may have the care and supervision of the public highways and bridges, shall, upon the written request of the department, furnish all available information in connection with the construction and maintenance of the highways and bridges in their respective districts or counties.

History: En. Sec. 5-115, Ch. 197, L. 1965; amd. Sec. 107, Ch. 316, L. 1974. Amendments

The 1974 amendment substituted "department" for "commission"; and made a minor change in phraseology.

32-2816. Designation of emergency area near construction project. A board of county commissioners may designate a portion of a county or state secondary road as an emergency area if increased traffic due to a construction project threatens public safety.

History: En. Sec. 1, Ch. 118, L. 1963; Sec. 32-317, R. C. M. 1947; redes. 32-2816 by Sec. 2, Ch. 316, L. 1974. Amendments

The 1974 amendment renumbered this section.

32-2817. Notice of designation of emergency area—removal of designation. Notice of the designation shall be printed in a newspaper of general circulation in the county. The notice shall describe the portion of road to be designated as an emergency area and the reason for the designation. The board shall post the area or roads affected with adequate signs. The board shall remove the emergency designation within thirty (30) days after the cessation of the increased traffic.

History: En. Sec. 2, Ch. 118, L. 1963; Sec. 32-318, R. C. M. 1947; amd. and redes. 32-2817 by Sec. 3, Ch. 316, L. 1974. Amendments

The 1974 amendment renumbered this section; and made minor changes in phraseology.

32-2818. Livestock not to run at large in emergency area. A person who owns or has custody of livestock may not permit the livestock to run upon the emergency area unless the livestock are under herd in transit across the emergency area in the custody of an attendant.

History: En. Sec. 3, Ch. 118, L. 1963; Sec. 32-319, R. C. M. 1947; amd. and redes. 32-2818 by Sec. 4, Ch. 316, L. 1974.

Amendments

The 1974 amendment renumbered this section; and made a minor change in phraseology.

32-2819. Impounding of animals at large—notice to owner—fees and mileage. A sheriff or other peace officer may impound livestock running on an emergency area without an attendant and shall notify the rightful owner of such impounded livestock. If the sheriff or peace officer cannot determine the rightful owner, then a state stock inspector of the department of livestock or a deputy state stock inspector of the county may be called to examine the livestock for brands to determine ownership. The rightful owners shall be notified by the inspector and the usual inspection fees and mileage shall be paid by the owner of such livestock.

History: En. Sec. 4, Ch. 118, L. 1963; Sec. 32-320, R. C. M. 1947; amd. and redes. 32-2819 by Sec. 5, Ch. 316, L. 1974.

Amendments

The 1974 amendment renumbered this section; inserted "of the department of livestock" after "state stock inspector"; and made a minor change in phraseology.

32-2820. Penalty for violations. A person who violates section 32-2818 is guilty of a misdemeanor and shall be fined not less than ten dollars (\$10) nor more than fifty dollars (\$50) for each violation.

History: En. Sec. 5, Ch. 118, L. 1963; Sec. 32-321, R. C. M. 1947; amd. and redes. 32-2820 by Sec. 6, Ch. 316, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "section 32-2818" for "this act"; and made minor changes in phraseology.

CHAPTER 29—BOARD OF COUNTY COMMISSIONERS RESPONSIBILITY FOR BRIDGES AND FERRIES

- Section 32-2901.** County to maintain bridges.
32-2902. Bridges over streams in cities and towns.
32-2903. Election to determine question of construction—bonds—special levy.
32-2904. Removal of obstructions and repair of bridges.
32-2905. Bridges under control and management of board—police regulations.
32-2906. Construction and maintenance of bridges crossing county lines.
32-2907. Ferries uniting two counties—report of ferrymen on joint ferries.

32-2901. County to maintain bridges. Each board shall maintain all public bridges other than those maintained by the department of highways.

History: En. Sec. 5-201, Ch. 197, L. 1965; amd. Sec. 108, Ch. 316, L. 1974. titled "Board of County Commissioners Responsibility for Bridges and Ferries."

Compiler's Note

Amendments

This chapter was designated as Part 2 of Chapter 5 of the Highway Code, en-

The 1974 amendment substituted "department of highways" for "commission."

32-2902. Bridges over streams in cities and towns. (1) Each board shall construct and maintain every bridge over a natural stream necessary to be constructed and maintained in any city or town.

(2) The city or town in which any such bridge is situated shall pay the whole or such part, not less than one-half ($\frac{1}{2}$), to be determined by the board, of the cost of planking, replanking, paving or repaving the bridge. The city or town shall construct and maintain in good repair the bridge approaches.

History: En. Sec. 5-202, Ch. 197, L.
1965.

32-2903. Election to determine question of construction—bonds—special levy. (1) Before undertaking the construction of any bridge the cost of which shall exceed ten thousand dollars (\$10,000), in any city or town, the board shall submit to the qualified electors of the county, at a general or special election, the question of whether the bridge shall be constructed and its cost paid by the county.

(2) If the electors vote in favor of construction, the board may issue and sell bonds of the county to the amount authorized for the construction of the bridge. Bonds shall be issued under such regulations as apply to other bonds of the county.

(3) The bridge shall be constructed using the proceeds of such sale.

(4) If the cost of the bridge does not exceed the amount authorized to be raised by a special tax, it may be levied as provided in section 7-104 [32-3604] of this code.

History: En. Sec. 5-203, Ch. 197, L.
1965.

32-2904. Removal of obstructions and repair of bridges. (1) Whenever any county road becomes obstructed, or any bridge needs repair or becomes dangerous for the passage of vehicles or persons, the board or the county surveyor, if he is in charge, shall remove the obstruction or repair the bridge, upon being notified thereof.

(2) Nothing in this section shall be construed as holding the board, or any member, responsible or liable for anything other than willful, intentional neglect or failure to act.

History: En. Sec. 5-204, Ch. 197, L.
1965.

32-2905. Bridges under control and management of board—police regulations. (1) The board shall manage and control all bridges referred to in this part [chapter]. It shall direct the method and time of making repairs, planking, replanking, paving and repaving.

(2) The board may also make repairs to stream beds and water-courses and the banks thereof when any bridge is in danger of being damaged or lost because of erosion or changes in the beds or banks.

(3) Such bridges and all persons on them shall be subject to the reasonable police regulations of the city or town in which any such bridge is situated.

History: En. Sec. 5-205, Ch. 197, L.
1965.

32-2906. Construction and maintenance of bridges crossing county lines. Bridges crossing the line between counties shall be constructed and maintained by the counties into which the bridges reach. Each county shall pay such portion of the costs of construction and maintenance as shall have been previously agreed upon by the respective boards.

History: En. Sec. 5-206, Ch. 197, L. 1965.

32-2907. Ferries uniting two counties—report of ferrymen on joint ferries. (1) When a public ferry, if constructed would unite two counties, the boards may act jointly to construct, maintain, and operate it. Each county shall acquire and maintain its own landings and approaches.

(2) When ferrymen are employed on joint ferries, they shall report quarterly to each board, giving such information as each board may require.

History: En. Sec. 5-207, Ch. 197, L. 1965.

CHAPTER 30—COUNTY ROAD SUPERINTENDENT

- Section 32-3001. County road superintendent—appointment and compensation.
 32-3002. Duties of county road superintendent.
 32-3003. Accounts and statements.
 32-3004. Examination of superintendent's report—warrant for claims.
 32-3005. Equipment, tools, and implements for use of superintendent.
 32-3006. Employment of laborers—hiring of equipment.
 32-3007. Construction of drains and ditches—penalty for obstructions.

32-3001. County road superintendent—appointment and compensation. (1) After his appointment, the county road superintendent shall serve at the pleasure of, and under the direction and control of the board. He shall file with the county clerk the customary oath of office and a bond approved by the board for the faithful performance of his duties.

(2) He shall receive such compensation as is determined by the board.

History: En. Sec. 5-301, Ch. 197, L. 1965.

Compiler's Note
 This chapter was designated as Part 3 of Chapter 5 of the Highway Code, entitled "County Road Superintendent."

32-3002. Duties of county road superintendent. (1) Under the direction and supervision of the board, the superintendent shall furnish plans and specifications for highway or bridge work. He shall be chairman of all boards of road viewers.

(2) Under such direction and supervision, he shall also:

(a) Take charge of all roads, bridges and causeways under the jurisdiction of the county.

(b) Open all new roads when they are duly established and ordered to be opened by the board.

(c) Perform at the time and in the manner directed by the board whatever shall be lawfully directed by the board concerning the public highways under the jurisdiction of the county.

History: En. Sec. 5-302, Ch. 197, L. 1965.

32-3003. Accounts and statements. The superintendent shall keep correct accounts of all labor performed, equipment and implements used, and materials furnished. He shall give to each person performing work, or furnishing equipment, implements, or materials a certificate stating the work performed and the price to be paid therefor.

History: En. Sec. 5-303, Ch. 197, L.
1965.

32-3004. Examination of superintendent's report—warrant for claims. At the first monthly or quarterly meeting held after filing of the superintendent's report, the board shall examine it. Upon the presentation of any certificate issued by the superintendent, and verification of it by the holder, as in other cases of claims against the county, the board shall cause to be issued a warrant for the amount of the certificate drawn on the treasurer against the county road fund.

History: En. Sec. 5-304, Ch. 197, L.
1965.

32-3005. Equipment, tools, and implements for use of superintendent. Upon the requisition of the superintendent, the board shall furnish any equipment, tools, and implements necessary, and pay for them out of the county road fund. The superintendent shall preserve the equipment, tools, and implements, and shall not allow them to be used except on public highways. At the expiration of his term of office, or upon his removal therefrom, he must turn over all equipment, tools, and implements to his successor or to the board.

History: En. Sec. 5-305, Ch. 197, L.
1965.

32-3006. Employment of laborers—hiring of equipment. Whenever it is necessary, the superintendent may employ suitable laborers, hire equipment and implements, and contract as to the wages and prices to be paid. Wages and prices shall not exceed rates established by the board for an eight-hour day.

History: En. Sec. 5-306, Ch. 197, L.
1965.

32-3007. Construction of drains and ditches—penalty for obstructions. (1) The superintendent may open or construct drains and ditches for making and preserving roads and highways, doing as little injury as may be possible to the adjoining land.

(2) Any person who stops or obstructs any drain or ditch so constructed forfeits the sum of fifty dollars (\$50.00), to be recovered by the superintendent or board in a civil action in any court of competent jurisdiction.

(3) Any person aggrieved by the act of the superintendent may make a written complaint to the board, which if it finds the complaint valid, may pay damages out of the county road fund.

History: En. Sec. 5-307, Ch. 197, L.
1965.

CHAPTER 31—LOCAL IMPROVEMENT DISTRICTS

Section	32-3101.	Duty of board to construct roads and levy assessments.
	32-3102.	Petition for construction or improvement of road.
	32-3103.	Resolution of public interest.
	32-3104.	Proceedings upon receipt of petition.
	32-3105.	Proceedings at meeting.
	32-3106.	Duties of committee and road superintendent.
	32-3107.	Report of county road superintendent—order creating district.
	32-3108.	Sharing of costs—order of board.
	32-3109.	Payment of county's share of expense.
	32-3110.	Formation and boundaries of district.
	32-3111.	Assessment of lands in each part—lien.
	32-3112.	Method of assessment.
	32-3113.	Appointment of inspector—compensation of inspector and committee.
	32-3114.	Construction by county—lien.
	32-3115.	Apportionment of costs—assessment roll—contents.
	32-3116.	Notice—confirmation—errors.
	32-3117.	Correction of errors—lien.
	32-3118.	Modes of payment of assessment.
	32-3119.	Immediate payment—notice to landowners.
	32-3120.	Contents of notice.
	32-3121.	Installment payment procedure—county treasurer to collect.
	32-3122.	Board provides method of payment.
	32-3123.	Order for issuance of bonds—form and contents.
	32-3124.	Notice in case of payment by special bonds—contents.
	32-3125.	Payment of assessment—redemption by payment.
	32-3126.	Issuance of special bonds to contractor—sale of bonds.
	32-3127.	Payment of interest—retirement.
	32-3128.	Collection of assessments by suit of owner of bonds.
	32-3129.	Auditing and payment of claims and accounts.
	32-3130.	Estimates of work completed—payment therefor.
	32-3131.	Disposition of residue of funds.

32-3101. Duty of board to construct roads and levy assessments. (1)
Upon proper petition, as hereinafter provided, the board shall cause county roads to be laid out, opened, constructed and improved.

(2) The board shall levy and cause to be collected an assessment upon all parcels of land specifically benefited by the laying out, opening, construction, or improvement for paying the costs thereof.

(3) The assessment shall be a first lien upon the land liable, prior and superior to all other liens and encumbrances.

(4) The board shall provide for the payment of assessments either on the immediate payment plan or by installments.

(5) The board shall issue local improvement district bonds and coupons for each installment.

History: En. Sec. 5-401, Ch. 197, L. 1965.

Compiler's Note

This chapter was designated as Part 4 of Chapter 5 of the Highway Code, entitled "Local Improvement Districts."

32-3102. Petition for construction or improvement of road. (1) A petition for laying out, opening, constructing, or improving a county road may be presented to the board by the owners of two-thirds (2/3) of the lineal feet of land fronting on the proposed or existing road.

(a) If any such land stands in the name of a deceased person or any person for whom a guardian has been appointed, the signature of the executor, administrator, or guardian shall be equivalent to the signature of the owner.

(2) The petition must set forth:

(a) That the petitioners are such owners and that they desire the petitioned action.

(b) The kind and nature of the improvement desired.

(c) The mode of payment of the assessments to be levied for defraying the cost thereof.

(d) The portion of the costs which the district, if formed, will assume and pay.

(i) It must not be less than thirty-five per cent (35%) of the costs, and may be as much as seventy-five per cent (75%) thereof.

History: En. Sec. 5-402, Ch. 197, L.
1965.

32-3103. Resolution of public interest. Upon receipt of the petition, the board shall pass a resolution that the public interest demands the laying out, opening, constructing or improving of the road, or part thereof, described in the resolution. The description shall not include any portion of any road within the boundaries of any city or incorporated town.

History: En. Sec. 5-403, Ch. 197, L.
1965.

32-3104. Proceedings upon receipt of petition. (1) After receipt of the petition and passage of the resolution, the board shall make an order fixing a time and place in the vicinity of the road for a meeting between the county road superintendent or his deputy and the petitioners and all owners upon whose lands special assessments will be levied.

(2) The county clerk shall immediately notify the county road superintendent of the meeting and shall cause a notice thereof to be printed in the newspaper published nearest to the vicinity of the road. The notice shall be published for three (3) consecutive weeks prior to the time of the meeting.

(3) The notice shall state the time and place of the meeting, and in general terms the kind of construction or improvement sought, and the places of beginning, intermediate points and termination.

History: En. Sec. 5-404, Ch. 197, L.
1965.

32-3105. Proceedings at meeting. (1) The petitioners and all owners of land fronting on the road or land owned within two miles on either side of it upon which special assessments will be levied may meet with the superintendent or his duly appointed deputy.

(2) The superintendent or his deputy, or, in their absence one of the landowners present, shall preside. Those present shall elect three as a committee of supervisors; at least one of them shall be a petitioner.

(a) A majority of the owners present and voting shall be sufficient for election. The presiding officer shall certify to the board the names of the owners elected to the committee.

(3) Those elected shall qualify immediately by taking an oath that they are owners of land benefited by the improvements and to be in-

cluded within the local assessment district. They shall take an oath that they will fully, impartially, and faithfully perform their duties as supervisors.

(4) The superintendent or his deputy may administer the oath, or it may be administered by anyone so authorized by law.

History: En. Sec. 5-405, Ch. 197, L. 1965.

32-3106. Duties of committee and road superintendent. (1) The committee and the surveyor or his deputy shall:

(a) Immediately view, examine, and survey the road petitioned for.

(b) Examine and determine the lands which will be specifically benefited by the road and which should be included within the district that is to be assessed.

(c) Ascertain whether any damage or injury to property will be sustained by or in consequence of the making of the road.

(d) Obtain, if possible, without cost the release in writing of each person of his claim for such damage or injury.

(e) Arrange, when necessary, for a release to be given for such amount as may be fair and reasonable.

(2) The road superintendent shall without delay prepare plans and specifications and cost estimates. He shall prepare a plat and description of the local assessment district and a description of the parcels of land included in the district. The valuation of the lands shall be that which appears on the last annual assessment roll of the county for the levying of general taxes.

History: En. Sec. 5-406, Ch. 197, L. 1965.

32-3107. Report of county road superintendent—order creating district. (1) At the next annual meeting of the board after the road superintendent has completed surveying the road and making estimates, he shall make a detailed report. The report shall state that the maps, descriptions, plans, specifications, and details and estimates of damages, costs, and expenses have been completed.

(2) The whole amount of damages, costs, and expenses shall not exceed 135% of the total taxable value of the parcels of land in the district, as determined from the last annual assessment roll of the county. If it does not, the board shall make and enter upon the report an order that the road be made.

(3) That order shall create the local improvement district to be known and designated as local improvement district No _____ in _____ county, Montana. Copies of the report shall be kept in the offices of the board and road superintendent.

History: En. Sec. 5-407, Ch. 197, L. 1965; amd. Sec. 41, Ch. 566, L. 1977.

Amendments

The 1977 amendment substituted

“135% of the total taxable value” in the first sentence of subsection (2) for “50% of the total assessed valuation”; and made minor changes in punctuation and style.

32-3108. Sharing of costs—order of board. The board may enter an agreement to share costs with the district when the petition presented states the proportion which the district will pay. After such an agreement has been made, specifying the amount to be paid by the district and the amount to be paid from county funds, the board shall make an order to that effect on the records of its proceedings.

History: En. Sec. 5-408, Ch. 197, L.
1965.

32-3109. Payment of county's share of expense. The board shall order paid from county funds the share of the county for construction or improvement of the road. However, payment shall not exceed sixty-five per cent (65%) of the cost. This amount shall be a proper charge against the county and shall be paid by the treasurer upon warrants duly drawn as ordered by the board.

History: En. Sec. 5-409, Ch. 197, L.
1965.

32-3110. Formation and boundaries of district. (1) The boundaries of each local assessment district shall be fixed as follows:

(a) The lands extending from the center of the road one-half ($\frac{1}{2}$) mile on each side thereof [measuring one (1) mile in width] shall constitute "Part One" of the district.

(b) The lands embraced within an area one (1) mile wide on each side of Part One shall constitute "Part Two" of the district.

(c) The lands embraced within an area one (1) mile wide on either side of Part Two shall constitute "Part Three" of the district.

(2) Each of the parts shall extend the full length of the proposed road and one mile beyond the terminus unless the committee shall otherwise provide.

History: En. Sec. 5-410, Ch. 197, L.
1965.

32-3111. Assessment of lands in each part—lien. (1) Each separate parcel of land in Part One shall be assessed for its proportion of forty-five per cent (45%) of the whole cost payable by the district.

(2) Each separate parcel of land in Part Two shall be assessed for its proportion of thirty-five per cent (35%) of the cost.

(3) Each separate parcel of land in Part Three shall be assessed for its proportion of twenty per cent (20%) of the cost.

(4) All of the lands in each part shall be subject to a lien for all of the assessments of that part until they have been paid.

History: En. Sec. 5-411, Ch. 197, L.
1965.

32-3112. Method of assessment. (1) The assessments upon the parcels of land in each part shall be made ratably according to the front-foot plan, as follows:

(a) The unit used to determine the proportion of assessment shall be

one foot of longitude measured along the road constituting the center of the district and extending latitudinally across the part.

(b) Because units in each part may not be equal, assessment rates for each part shall be determined for eight hundred eighty (880) square feet of surface.

(2) If the areas of the parts are not equal, the rates fixed for parts one, two, and three shall be related to each other as are the numbers forty-five (45), thirty-five (35) and twenty (20), respectively.

History: En. Sec. 5-412, Ch. 197, L.
1965.

32-3113. Appointment of inspector—compensation of inspector and committee. (1) The committee and road superintendent together shall appoint some suitable and competent person other than they to act as an inspector of the work. He shall be upon the work at all times during its progress and inspect the performance thereof. He shall report to and be under the supervision of the superintendent.

(2) He shall be paid for his services as inspector at the rate of five dollars (\$5) per day for the time he is actually engaged thereon.

(3) Each supervisor shall be paid the sum of three dollars (\$3) per day for the time the committee is actually engaged in meeting and acting with the superintendent and in transacting the business of the district. No mileage or other expense money shall be paid.

History: En. Sec. 5-413, Ch. 197, L.
1965.

32-3114. Construction by county—lien. (1) If bids for construction and improvement are rejected by the committee, the district may contract with the board to construct or improve the road.

(2) Roads in districts may be constructed and improved in the first instance at the entire expense of the county, and the county may, as far as practicable, take the place of a private contractor.

(3) When the county has paid for construction and improvements, it shall be recompensed for by the district in accordance with their agreement. If bonds were issued under the installment plan, they shall become the property of the county.

(4) The county shall have the same lien as if the contract had been let to a private contractor.

History: En. Sec. 5-414, Ch. 197, L.
1965.

32-3115. Apportionment of costs—assessment roll—contents. (1) When the order for improvement and construction has been made by the board, the committee and the county assessor shall apportion the estimated cost and expenses to the land in the district.

(2) Within thirty (30) days before the letting of the contract, the assessor shall report to and file with the board and the treasurer an assessment roll in duplicate. It shall contain the description of each

parcel of land to be assessed, the amount to be assessed against it, and the name of the owner, if known. In no case shall a mistake in the name of the owner be fatal to the assessment when the description of the land is correct.

History: En. Sec. 5-415, Ch. 197, L. 1965.

32-3116. Notice—confirmation—errors. (1) As soon as the assessment roll is reported and filed, the board shall publish notice for three consecutive weeks in the newspapers in which notice of invitations for bids for the contract was published. The notice shall notify all persons interested that the assessment roll has been filed, and require them to appear at the office of the board at the county seat at a time not less than fifteen (15) days from the date of the last publication of the notice to make objections.

(2) At the time fixed, the board and the assessor shall meet. If no objections have been filed, the board shall make an order confirming the assessment roll. If written objections, properly verified, have been filed, the board shall hear the objections, receiving any testimony from any party involved.

History: En. Sec. 5-416, Ch. 197, L. 1965.

32-3117. Correction of errors—lien. (1) After the hearing, the board shall make such corrections as appear just to apportion the assessment to the benefit to be received. It shall then make and enter an order approving and certifying the assessment roll.

(2) With the aid of the assessor, the board shall levy and assess the amounts on the assessment roll against the parcels of land, or parts thereof.

(3) The assessment so made shall be a first lien on the land described in the assessment roll.

History: En. Sec. 5-417, Ch. 197, L. 1965.

32-3118. Modes of payment of assessment. The petition shall state whether the landowners want to make payment by the mode of "immediate payment" or by payments in installments. Installment payments shall be made in six equal portions, in one (1), two (2), three (3), four (4), five (5), and six (6) years. Payments shall be in the form of bonds which shall draw six per cent (6%) interest per annum from the date they are issued until they are paid.

History: En. Sec. 5-418, Ch. 197, L. 1965.

32-3119. Immediate payment—notice to landowners. (1) If immediate payment is chosen, the board shall deliver the assessment roll to the county clerk as soon as it has been proved and certified. The clerk shall file a duplicate in his office and immediately deliver the other to the treasurer.

(2) The treasurer shall publish a notice for two consecutive weeks in the newspapers in which the notice for bids was advertised and shall mail a copy of the notice to the owners of the land assessed, when the name and post-office address of the owner are known.

(a) Failure to mail notice shall not be fatal to the assessment when it has been published.

History: En. Sec. 5-419, Ch. 197, L. 1965.

32-3120. Contents of notice. The notice shall state the following: (1) The assessment roll has been certified to the treasurer for collection.

(2) Unless payment is made within thirty (30) days from the date of the notice, the payment will become delinquent and shall bear interest at the rate of ten per cent (10 %) per annum.

(3) If the assessment is not paid before it becomes delinquent, a penalty of five per cent (5 %) shall be added, as well as the interest on the annual tax roll for the current year.

(4) The interest and penalty shall be collected, together with such additional charges as are authorized to be charged and collected on other delinquent taxes.

(5) The land assessed shall be sold for the amount of the assessment with interest, penalty, and costs, in the manner and with the same authority as lands are sold for general taxes.

History: En. Sec. 5-420, Ch. 197, L. 1965.

32-3121. Installment payment procedure—county treasurer to collect.

(1) If the mode of payment is to be by installments, the board and the committee shall approve and certify the assessment roll.

(2) The board and the assessor shall, at the time of levying the assessment, in their order setting the levy, declare that the sum charged against each parcel of land may be paid in equal annual installments with interest upon the whole sum at the rate fixed by the board of county commissioners in accordance with law. The order shall specify the number of installments which shall be equal to the number of years for which the bonds may run.

(3) Each year thereafter, the treasurer shall collect one of the installments together with the interest due thereon and the interest due on the installments thereafter to become due.

(4) Provisions concerning delinquency and the sale of land set forth with relation to the mode of immediate payment shall be likewise applicable to installment payments.

History: En. Sec. 5-421, Ch. 197, L. 1965; amd. Sec. 27, Ch. 234, L. 1971. by the board of county commissioners in accordance with law" for "of six per cent (6%) per annum" at the end of the first sentence of subsection (2).

Amendments

The 1971 amendment substituted "fixed

32-3122. Board provides method of payment. When improvement is ordered upon a petition specifying the method of payment of bonds, the

board shall provide that the payment of costs and expenses be made under the provisions of this part [chapter] by bonds charged against the lands in the district. The bonds may be issued to the contractors in payment or costs may be paid by the proceeds of the bonds to be issued and sold as hereinafter provided. In all other cases, the board may so provide

History: En. Sec. 5-422, Ch. 197, L. 1965.

32-3123. Order for issuance of bonds—form and contents. (1) The board shall make and enter an order authorizing and directing the issuance of bonds payable not more than ten (10) years after the date of issuance.

(2) Each bond shall provide that the holder shall not demand payment until it comes due. It shall bear interest, payable annually, and shall have interest coupons for each interest payment attached.

(3) Each bond and coupon shall bear the date of issuance and be made payable to bearer. Each bond shall be signed by the chairman of the board and attested by the county clerk. The seal of the board shall be affixed to each bond.

(4) Bonds shall be issued in denominations of not less than one hundred dollars (\$100) or more than one thousand dollars (\$1,000).

(5) Each bond shall contain a reference to the district for which it is issued and to the order and record authorizing the issue. It shall state that it is payable only out of the local improvement funds, created by special assessment, and not otherwise.

(6) On its face, each bond shall bear the designation of the district: "Local Improvement District No. _____ in _____ county, Montana."

(7) No bond shall be issued in excess of the costs and expenses of the improvements and construction.

History: En. Sec. 5-423, Ch. 197, L. 1965; amd. Sec. 28, Ch. 234, L. 1971.

rate of six per cent (6%) per annum" after "bear interest" in the second sentence of subsection (2); and made a minor change in style.

Amendments

The 1971 amendment deleted "at the

32-3124. Notice in case of payment by special bonds—contents. (1) If the board provides that payment of costs shall be made by the issuance of bonds, the treasurer shall publish notice for two consecutive weeks and mail a copy of the notice in the same manner as is provided with relation to immediate payment.

(2) The notice shall state that:

(a) The assessment roll has been certified to the treasurer for collection.

(b) Unless payment of the whole amount of the assessment is made within thirty (30) days from the date of the notice, special bonds shall be issued against the lands in the district for the payment of the assessment.

(c) If bonds are issued, they will be payable in annual installments with interest thereon at the rate provided in the bonds.

History: En. Sec. 5-424, Ch. 197, L. 1965.

32-3125. Payment of assessment—redemption by payment. (1) At any time within thirty (30) days after notice, the owner may pay the assessment and release and discharge his lands therefrom and from the operation and effect of the bonds.

(2) No bonds shall be issued until twenty (20) days after the expiration of thirty (30) days after notice. No bonds shall be issued for any assessment paid in full within the thirty (30) days.

(3) The owner of lands may redeem them from all liability for assessment at any time after the thirty (30) days by paying all of the assessment remaining unpaid, together with interest and all charges thereon to the date of maturity of the installment next falling due.

(4) All payments shall be made to the treasurer, who shall apply them solely to the costs of the improvement or construction.

History: En. Sec. 5-425, Ch. 197, L. 1965.

32-3126. Issuance of special bonds to contractor—sale of bonds. Bonds ordered sold by the board may be issued to the contractor constructing the improvement in payment. The board may also direct, in the order providing for issuance of the bonds, that they be sold by the treasurer at not less than par value and accrued interest. The proceeds of such bonds shall be applied in payment of the costs and expenses of the improvement.

History: En. Sec. 5-426, Ch. 197, L. 1965.

32-3127. Payment of interest—retirement. (1) The treasurer shall pay the interest on the bonds out of the funds of the district collected on assessments for the bonds.

(2) Whenever there is money in the fund against which the bonds have been issued over and above the amount sufficient for the payment of interest on all unpaid bonds, it shall be used to pay the principal on one or more of the bonds. The treasurer shall call in and pay the bonds in their numerical order.

(3) The call shall be published in the county official newspaper on the day following the maturity date of the installment of assessment, or as soon thereafter as practicable. It shall state that special bonds No. _____ (giving the serial number or numbers of the bonds called) of the district will be paid on the day the next interest coupons become due. Interest upon the bonds thus called shall cease upon that date.

History: En. Sec. 5-427, Ch. 197, L. 1965.

32-3128. Collection of assessments by suit of owner of bonds. (1) If the treasurer fails, neglects, or refuses to pay bonds or to collect promptly any assessments when due, the owner of any bonds may proceed in his own name to collect the assessments and to foreclose the lien in any court of competent jurisdiction. In addition to the amount of the assessments and interest thereon, any such owner shall recover five per cent (5 %) and the costs of his suit.

(2) Any number of holders of bonds for any single district may join as plaintiffs, and any number of owners of land on which the bonds are a lien may be joined as defendants.

(3) Neither the holder nor any owner of any bond shall have any claim against the county through which the bond is issued except for the assessment. His remedy in case of nonpayment shall be confined to the enforcement of the assessments.

(4) A copy of this section shall be plainly written, printed, or engraved on each bond.

History: En. Sec. 5-428, Ch. 197, L.
1965.

32-3129. Auditing and payment of claims and accounts. (1) The committee shall approve and certify all claims and accounts for services and every kind of expense payable from funds of the district.

(2) The county auditor, or the county clerk in any county which has no auditor shall then audit all such claims and accounts. Thereafter he shall issue to the treasurer an order in favor of the person to whom the claim or account is payable to pay it.

(3) Upon presentation of the order by the person to whom it was issued, or his assignee, the treasurer shall pay it from the funds of the district.

History: En. Sec. 5-429, Ch. 197, L.
1965.

32-3130. Estimates of work completed—payment therefor. (1) The surveyor with the approval of the committee shall make estimates of the proportion of the work completed. After auditing, the estimates may be paid by the treasurer to an amount not exceeding eighty per cent (80 %) during the progress of the work.

(2) If the assessment is payable by installments, the treasurer shall pay the order only from such assessments as shall have been collected prior to the issue of the bonds and from the proceeds of the sales of the bonds after issue.

(3) If the board has ordered that the contractor shall receive bonds in payment, the order for payment shall call for bonds instead of money. The treasurer shall deliver the bonds, dating them the day he delivers them to the contractor. Interest shall run therefrom.

(4) Amounts collected on installment payments of assessments shall be reserved and disbursed by the treasurer for the payment of principal and interest and for the redemption of such bonds.

History: En. Sec. 5-430, Ch. 197, L.
1965.

32-3131. Disposition of residue of funds. (1) After the payment of the whole cost of construction or improvement, any money remaining in the county treasury which belongs to the district shall be refunded on demand. A rebate therefrom shall be made on demand to any person who shall not have paid his assessment in full.

(2) Demand shall be made within two (2) years from the date upon which the assessment became due.

(3) Any such money remaining in the county treasury after the expiration of two years for which no demand has been made shall go into the general funds.

History: En. Sec. 5-431, Ch. 197, L. 1965.

CHAPTER 32—STATE VEHICLE FEES—PAYMENT, EXPIRATION AND DISPOSITION

- Section 32-3201. Time for payment of fees.
 32-3202. Expiration date.
 32-3203. License is transferable.
 32-3204. Disposition of fees collected by county treasurer.
 32-3205. Deposit of state highway moneys.
 32-3205.1. Blank forms furnished county treasurers.
 32-3206. Additional tax by municipalities prohibited—exceptions.

32-3201. Time for payment of fees. (1) A person who owns or operates a vehicle subject to the fees provided in sections 32-3301 through 32-3308 and section 32-3310 shall pay the fees provided in this chapter.

(2) Prior to or at the time of registration of the vehicle as required under Title 53, or prior to the operation of the vehicle on the public highways, fees paid shall be the full amount provided in this chapter unless otherwise provided by law. With respect to vehicles operating on the highways with a current rear windshield sticker issued under the provisions of section 53-109.1 or section 53-109.2, the fees provided in this chapter shall be due and payable at the time of registration.

(3) A person who makes application for license after the first day of July of any year shall pay one-half ($\frac{1}{2}$) of those fees.

(4) When a person makes application for registration required under Title 53, chapter 1, for a period of time other than the calendar year, the fees provided in Title 32, chapter 33, shall be computed for the registration period at one-twelfth ($\frac{1}{12}$) of applicable fee for each month or part of month in the registration period.

History: En. Sec. 6-101, Ch. 197, L. 1965; amd. Sec. 1, Ch. 292, L. 1967; amd. Sec. 1, Ch. 47, L. 1973; amd. Sec. 109, Ch. 316, L. 1974; amd. Sec. 14, Ch. 74, L. 1975.

Compiler's Note

Chapters 32 to 35, inclusive, of this title were designated as Chapter 6 of the Highway Code, entitled "State Finance." This chapter was designated as Part 1 of Chapter 6, entitled "Fees: Time for Payment, Expiration, Disposition."

Amendments

The 1967 amendment rewrote this section. Prior to amendment, it read, "A person who owns a motor truck, truck-

tractor, trailer, semitrailer, bus, or new passenger motor vehicle and operates it upon the highways of the state shall, at the time he makes application for license as provided in section 53-114, pay any additional fees prescribed in this chapter. A person who makes application for license after the first day of July of any year shall pay one-half ($\frac{1}{2}$) of those fees."

The 1973 amendment added the second sentence to the second paragraph.

The 1974 amendment made minor changes in phraseology, punctuation and style.

The 1975 amendment added subsection (4).

32-3202. Expiration date. The fees paid hereunder for every motor truck, truck-tractor, trailer, semitrailer, bus or automobile shall expire on

December 31 of each year. Any certificate, registration, or license issued shall be valid only for the period for which issued.

History: En. Sec. 6-102, Ch. 197, L. 1965.

32-3203. License is transferable. The certificate, registration or license issued hereunder is transferable by the licensee to another truck, truck-tractor, trailer, semitrailer, low-boy trailer, pole trailer, housetrailer, or passenger car upon transfer of ownership of such truck, truck-tractor, trailer, semitrailer, low-boy trailer, pole trailer, housetrailer, or passenger car to a replacement vehicle of the same type. If a smaller vehicle is purchased, there shall be no refund.

History: En. Sec. 6-103, Ch. 197, L. 1965; amd. Sec. 4, Ch. 127, L. 1969.

Amendments

The 1969 amendment substituted "by the licensee * * * of the same type" for "only upon transfer of title or interest of

the legal owner" at the end of the first sentence and deleted second and third sentences reading: "It is not transferable to another vehicle. However, if a vehicle is destroyed from any cause, the commission may permit transfer to a replacement vehicle."

32-3204. Disposition of fees collected by county treasurer. At the time of collecting the fees provided for in section 32-3201, each county treasurer shall retain five per cent (5%) of the fees collected by him for the cost of administration, and for deposit in the general fund of the county. The remaining ninety-five per cent (95%) shall be remitted monthly to the state treasurer for deposit to the credit of the department of highways. The remittance shall be made on forms furnished to the county treasurer by the department.

History: En. Sec. 6-104, Ch. 197, L. 1965; amd. Sec. 1, Ch. 293, L. 1967; amd. Sec. 110, Ch. 316, L. 1974.

Amendments

The 1967 amendment rewrote the first sentence of this section. Prior to amendment, it read, "At the time of collecting the fees hereinafter provided for, each county treasurer shall retain five per cent (5%) of the fees so collected for the cost of administration."

The 1974 amendment substituted "de-

partment of highways" and "department" for "commission"; and made minor changes in phraseology and style.

Separability Clause

Section 2 of Ch. 293, Laws 1967 read "The provisions of this act shall be severable and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitutional or void, the remainder of this act shall continue in full force and effect."

32-3205. Deposit of state highway moneys. (1) Any reference to the state highway fund shall be taken to mean the state highway account in the earmarked revenue fund.

(2) Moneys received for the use of the department from the receipt or transfer of motor vehicle license fees, as provided by law, or from other state sources shall be deposited in the earmarked revenue fund to the credit of the department.

(3) Moneys received from the counties and from the federal government or other agencies shall be deposited in the federal and private revenue fund to the credit of the department.

(4) Hereafter, moneys collected for the department as authorized by law shall be credited to such fund or funds by the state treasurer.

History: En. Sec. 6-105, Ch. 197, L. 1965; amd. Sec. 111, Ch. 316, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "commission" throughout the section; and made minor changes in phraseology.

32-3205.1. Blank forms furnished county treasurers. The department shall furnish all county treasurers with the following:

1. Blank application forms and affidavit forms outlining and providing for the information needed in each classification of registration required.

2. Registration, license or certificates in a form determined most suitable by the department.

3. The other forms, stickers, certificates or blanks the department considers necessary to carry out chapters 32 and 33 of this title.

History: En. Sec. 6, Ch. 219, L. 1951; Sec. 53-620, R. C. M. 1947; amd. and redes. 32-3205.1 by Sec. 181, Ch. 316, L. 1974.

Amendments

The 1974 amendment renumbered this

section; substituted references to "department" for references to "state highway commission"; substituted "chapters 32 and 33 of this title" for "the provisions of this act" in subdivision 3; and made minor changes in phraseology.

32-3206. Additional tax by municipalities prohibited — exceptions. Municipalities shall not levy, assess, collect, or charge any additional tax upon any carrier of persons or property for hire, except as provided by law. However, no carrier shall be exempt hereby from paying a parking, curb or ad valorem property tax levied by any municipality.

History: En. Sec. 6-106, Ch. 197, L. 1965.

CHAPTER 33—ADDITIONAL TRUCK, TRAILER AND BUS FEES—SALES TAX ON VEHICLES—EXCESS WEIGHT PENALTIES

- Section 32-3301. Additional fees on motor trucks and truck-tractors.
- 32-3302. Additional fees on trailers and semitrailers.
- 32-3302.1. Alternative additional fees on truck-trailer combinations.
- 32-3303. Additional fees—gross weight over 42,000 pounds.
- 32-3304. Additional fees—pole trailers, low-boys, and livestock.
- 32-3304.1. Additional fees—haulers of ready-mix concrete.
- 32-3305. Additional fees—house trailers.
- 32-3306. Additional fees—certain farm vehicles.
- 32-3307. Additional fees—buses.
- 32-3308. Additional fees—quarterly payment.
- 32-3309. Failure to pay additional fees—penalty.
- 32-3310. Three-unit combination—fees in lieu of gross weight fees otherwise provided—marking.
- 32-3312. Additional fees on motor trucks, truck-tractors, trailers and semitrailers from other states.
- 32-3313. Temporary trip permits showing payment of fees—display.
- 32-3314. Time for payment of fees by nonresidents.
- 32-3315. Sales tax on new motor vehicles.
- 32-3315.1. Demonstration of trucks and trailers authorized—dealer's plate to be used.
- 32-3315.2. Application for truck demonstration permit—form and contents—number of permits authorized.
- 32-3315.3. Operation under truck demonstration permit—period of permit—rental under permit prohibited.
- 32-3315.4. Violation of truck demonstration provisions.
- 32-3315.5. Disposition of truck demonstration fees.

- 32-3316. Violation—penalty.
- 32-3317. Excess weight—penalties.
- 32-3318. Enforcement.
- 32-3319. Exemptions.
- 32-3320. Purpose of fees.

32-3301. Additional fees on motor trucks and truck-tractors. In addition to other fees for the licensing of vehicles, there shall be paid and collected annually for each motor truck and truck-tractor, based upon the maximum gross loaded weight thereof as set by the licensee in his application, the following fees:

Schedule I

Up to 6,000 lbs. -----	\$ 7.50
6,001 lbs. or more, and less than 8,000 lbs. -----	12.50
8,001 lbs. or more, and less than 10,000 lbs. -----	17.50
10,001 lbs. or more, and less than 12,000 lbs. -----	20.00
12,001 lbs. or more, and less than 14,000 lbs. -----	22.50
14,001 lbs. or more, and less than 16,000 lbs. -----	27.50
16,001 lbs. or more, and less than 18,000 lbs. -----	37.50
18,001 lbs. or more, and less than 20,000 lbs. -----	50.00
20,001 lbs. or more, and less than 22,000 lbs. -----	62.50
22,001 lbs. or more, and less than 24,000 lbs. -----	93.75
24,001 lbs. or more, and less than 26,000 lbs. -----	125.00
26,001 lbs. or more, and less than 28,000 lbs. -----	156.25
28,001 lbs. or more, and less than 30,000 lbs. -----	206.25
30,001 lbs. or more, and less than 32,000 lbs. -----	262.50
32,001 lbs. or more, and less than 34,000 lbs. -----	318.75
34,001 lbs. or more, and less than 36,000 lbs. -----	375.00
36,001 lbs. or more, and less than 38,000 lbs. -----	431.25
38,001 lbs. or more, and less than 40,000 lbs. -----	487.50
40,001 lbs. or more, and less than 42,000 lbs. -----	543.75

History: En. Sec. 6-201, Ch. 197, L. 1965; amd. Sec. 2, Ch. 2, Ex. L. 1967.

Amendments

The 1967 amendment increased the fees under this section where applicable from \$6 to \$7.50; 10 to 12.50; 14 to 17.50; 16 to 20.00; 18 to 22.50; 22 to 27.50; 30 to 37.50; 40 to 50.00; 50 to 62.50; 75 to 93.75; 100 to 125.00; 125 to 156.25; 165 to 206.25; 210 to 262.50; 255 to 318.75; 300 to 375.00; 345 to 431.25; 390 to 487.50; and 435 to 543.75.

Compiler's Note

This chapter was designated as Part 2 of Chapter 6 of the Highway Code, entitled "Additional Fees, Sales Tax, and Penalty."

32-3302. Additional fees on trailers and semitrailers. In addition to other fees for the licensing of vehicles there shall be paid and collected annually for each trailer and semitrailer, based upon the maximum gross loaded weight thereof as set by the licensee in his application, except as otherwise provided, the following fees:

Schedule II

Trailers Other Than House Trailers.

Up to 2,500 lbs. for personal use—Exempt	
Up to 2,500 lbs. for commercial use -----	\$3.75
2,501 lbs. or more, and less than 6,000 lbs. -----	5.00

6,001 lbs. or more, and less than 8,000 lbs.	15.00
8,001 lbs. or more, and less than 10,000 lbs.	17.50
10,001 lbs. or more, and less than 12,000 lbs.	20.00
12,001 lbs. or more, and less than 14,000 lbs.	22.50
14,001 lbs. or more, and less than 16,000 lbs.	27.50
16,001 lbs. or more, and less than 18,000 lbs.	37.50
18,001 lbs. or more, and less than 20,000 lbs.	50.00
20,001 lbs. or more, and less than 22,000 lbs.	62.50
22,001 lbs. or more, and less than 24,000 lbs.	93.75
24,001 lbs. or more, and less than 26,000 lbs.	125.00
26,001 lbs. or more, and less than 28,000 lbs.	156.25
28,001 lbs. or more, and less than 30,000 lbs.	206.25
30,001 lbs. or more, and less than 32,000 lbs.	262.50
32,001 lbs. or more, and less than 34,000 lbs.	318.75
34,001 lbs. or more, and less than 36,000 lbs.	375.00
36,001 lbs. or more, and less than 38,000 lbs.	431.25
38,001 lbs. or more, and less than 40,000 lbs.	487.50
40,001 lbs. or more, and less than 42,000 lbs.	543.75

History: En. Sec. 6-202, Ch. 197, L. 1965; amd. Sec. 3, Ch. 2, Ex. L. 1967.

Amendments

The 1967 amendment increased the fees under this section where applicable from 3 to 3.75; 4 to 5.00; 12 to 15.00; 14

to 17.50; 16 to 20.00; 18 to 22.50; 22 to 27.50; 30 to 37.50; 40 to 50.00; 50 to 62.50; 75 to 93.75; 100 to 125.00; 125 to 156.25; 165 to 206.25; 210 to 262.50; 255 to 318.75; 300 to 375.00; 345 to 431.25; 390 to 487.50; and 435 to 543.75.

32-3302.1. Alternative additional fees on truck-trailer combinations.

(1) In addition to other fees for the licensing of vehicles, there may be paid and collected annually instead of the fees provided in section 32-3301, for each motor truck or truck-tractor, based upon the maximum combined gross loaded weight of a truck-tractor with a semitrailer, a truck-tractor with a semitrailer and a full trailer, a motor truck and a trailer, or a motor truck and trailers, as set by the licensee in his application, the following fees:

Schedule III

Truck-tractor with a semitrailer, a truck-tractor with a semitrailer and a full trailer, a motor truck and a trailer, or a motor truck and trailers:

Up to 42,000 lbs.	\$ 571.00
42,001 to 44,000 lbs.	631.00
44,001 to 46,000 lbs.	691.00
46,001 to 48,000 lbs.	752.00
48,001 to 50,000 lbs.	812.00
50,001 to 52,000 lbs.	871.00
52,001 to 54,000 lbs.	931.00
54,001 to 56,000 lbs.	992.00
56,001 to 58,000 lbs.	1,052.00
58,001 to 60,000 lbs.	1,112.00
60,001 to 62,000 lbs.	1,172.00

62,001 to 64,000 lbs.	1,233.00
64,001 to 66,000 lbs.	1,293.00
66,001 to 68,000 lbs.	1,352.00
68,001 to 70,000 lbs.	1,412.00
70,001 to 72,000 lbs.	1,473.00
72,001 to 74,000 lbs.	1,533.00
74,001 to 76,000 lbs.	1,593.00
76,001 to 78,000 lbs.	1,653.00
78,001 and over	65.50

per ton or fraction thereof.

(2) Payment of the fees provided in this section exempts a semi-trailer or trailer in combination with a motor truck or truck-tractor so licensed from the fees provided in sections 32-3302, 32-3310, 32-3312, and 53-129.

(3) The trailers or semitrailers must be currently registered in another state or county.

(4) A trailer or semitrailer entering the state in combination with a truck or truck-tractor licensed under the above schedule may be moved in the local delivery zone in combination with a truck, truck-tractor, licensed under section 32-3301, without payment of any additional fees on the truck or truck-tractor, trailer or semitrailer.

(5) A permit must be obtained from the department of highways before the truck-tractor is used in local service and the permit is continuous and issued at no fee. The permit shall not be issued until proof of payment of fees under Schedule III has been established.

History: En. Sec. 7, Ch. 2, Ex. L. 1967; amd. Sec. 1, Ch. 212, L. 1971; amd. Sec. 112, Ch. 316, L. 1974.

Title of Act

An act amending section 32-1123, R. C. M. 1947, relating to maximum dimensions, weights and other characteristics and factors of vehicles, providing that limitations shall not exceed those for the federal interstate highway system until federal law permits states to exceed same; amending sections 32-3301, 32-3302, 32-3303, 32-3305 and 32-3306, R. C. M. 1947, enacted as sections 6-201, 6-202, 6-203 and 6-205, chapter 197, Laws of 1965, relating to additional fees on motor trucks, truck-tractors, trailers, semitrailers and house trailers and increasing the fees; providing that additional fees for each motor truck or truck-tractor, based upon maximum gross loaded weight

of combinations with trailers and semitrailers, may be paid instead of additional fees provided for in sections 32-3301 and 32-3302, R. C. M. 1947, and allowing for exemptions; and providing an effective date.

Amendments

The 1971 amendment added the reference to section 53-129 at the end of the first paragraph after the schedule; and added the final three paragraphs.

The 1974 amendment substituted "department of highways" for "state highway commission" in subsection (5); and made minor changes in phraseology and style.

Effective Date

Section 8 of Ch. 2, Ex. Laws 1967 read "This act is effective January 1, 1968."

32-3303. Additional fees—gross weight over 42,000 pounds. In addition to the fees provided for in sections 32-3301 and 32-3302, for each motor truck, truck-tractor, trailer, or semitrailer having a gross loaded weight in excess of forty-two thousand (42,000) pounds and within the weight limits specified in sections 32-1123.1 through 32-1123.11, there shall be paid and collected annually a fee of sixty-two dollars and fifty cents (\$62.50) for each two thousand (2,000) pounds, or fraction thereof.

History: En. Sec. 6-203, Ch. 197, L. 1965; amd. Sec. 4, Ch. 2, Ex. L. 1967; amd. Sec. 113, Ch. 316, L. 1974.

Amendments

The 1967 amendment substituted "32-

3301 and 32-3302" for "6-201 and 6-202"; and increased the annual fee paid under this section from \$50 to \$62.50.

The 1974 amendment substituted reference to "sections 32-1123.1 through 32-1123.11" for reference to "section 32-1123."

32-3304. Additional fees—pole trailers, low-boys, and livestock. There shall be paid and collected annually a fee equal to seventy-five per cent (75%) of the fees provided in Schedule I and Schedule II above on pole trailers; trucks, truck-tractors, trailers and semitrailers used exclusively in hauling livestock and logs; truck-tractors and low-boy trailers used exclusively in hauling equipment; and truck-tractors drawing or hauling said low-boy trailers.

History: En. Sec. 6-204, Ch. 197, L. 1965; amd. Sec. 1, Ch. 187, L. 1969.

Amendments

The 1969 amendment deleted reference to equipment used in hauling ready-mix concrete.

32-3304.1. Additional fees — haulers of ready-mix concrete. There shall be paid and collected annually a fee equal to fifty-five per cent (55%) of the fees provided in Schedule I and Schedule II, as provided in section 32-3301 and 32-3302, R. C. M. 1947, on concrete mixer trucks, concrete mixer trailers and concrete mixer semitrailers used exclusively for hauling ready-mix or ready-to-pour concrete and truck-tractors used exclusively in hauling concrete mixer semitrailers.

History: En. 32-3304.1 by Sec. 2, Ch. 187, L. 1969; amd. Sec. 1, Ch. 102, L. 1971.

Schedules I and II contained in sections 32-3301 and 32-3302.

Title of Act

An act to amend section 32-3304, R. C. M. 1947, as amended by chapter 197, Laws of 1965, by striking therefrom reference to equipment used in hauling ready-mix concrete; and providing for a new section to be numbered 32-3304.1, providing for the annual payment and collection on trucks, truck-tractors, trailers and semitrailers used exclusively in hauling ready-mix concrete of a fee equal to fifty-five per cent (55%) of the fees provided in

Amendments

The 1971 amendment made a minor change in style and substituted "concrete mixer trucks, concrete mixer trailers and concrete mixer semitrailers used exclusively for hauling ready-mix or ready-to-pour concrete and truck tractors used exclusively in hauling concrete mixer semitrailers" at the end of the section for "trucks, truck-tractors, trailers and semitrailers used exclusively in hauling ready-mix concrete."

32-3305. Additional fees—house trailers. In addition to other fees for the licensing of vehicles, there shall be paid and collected annually for each house trailer, based upon over-all length of body as set by the licensee in his application, except as otherwise provided, a fee equal to seventy-five cents (\$.75) for each foot of over-all trailer body length exclusive of bumpers and hitch.

History: En. Sec. 6-205, Ch. 197, L. 1965; amd. Sec. 5, Ch. 2, Ex. L. 1967.

Amendments

The 1967 amendment increased the fee under this section from 50¢ to 75¢.

32-3306. Additional fees—certain farm vehicles. Except for motor trucks owned and operated by co-operative associations or co-operative marketing associations, there shall be paid and collected annually a fee equal to sixteen per cent (16%) of the fees provided in Schedule I and

Schedule II above on motor trucks, trailers and semitrailers, owned and operated by ranchers or farmers in the transportation of their own ranch, farm, orchard, or dairy products from point of production to market, or of supplies, commodities or equipment to be used on the ranch, farm, orchard, or dairy, or in the infrequent or seasonal transportation by one farmer for another for any purpose other than commercial hire of products of the farm, orchard or dairy, or of supplies or commodities to be used on the farm, orchard or dairy, and on one truck tractor and lowboy trailer used by contractors engaged exclusively in soil conservation work and land leveling activities that result in direct benefit to agriculture. However, the minimum fee so paid shall be six dollars (\$6). The terms "trailers and semitrailers" as used herein shall not include farm wagons.

History: En. Sec. 6-206, Ch. 197, L. 1965; amd. Sec. 1, Ch. 143, L. 1967; amd. Sec. 6, Ch. 2, Ex. L. 1967.

bodying the amendment made by both 1967 acts.

Compiler's Notes

This section was amended twice in 1967, once by Ch. 143 and once by Ch. 2 (Ex. Sess.). Neither amendatory act referred to or incorporated the changes made by the other. Since the two amendments do not appear to conflict, the compiler has made a composite section em-

Amendments

Chapter 143, Laws of 1967, inserted "and on one truck tractor * * * in direct benefit to agriculture" after "orchard or dairy"; and increased the minimum fee to be paid by farm vehicles from \$4 to \$6.

Chapter 2 (Ex. Sess.), Laws of 1967, decreased the percentage of the fee equal to fees provided in Schedule I under this section from 20 to 16 per cent; and increased the minimum fee from \$4 to \$6.

32-3307. Additional fees—buses. There shall be paid and collected annually for each bus or auto stage with the exception of school buses a fee of seven dollars (\$7) per seat, exclusive of the first seven (7) seats and the operator, for the maximum adult seating capacity thereof, except that motor vehicles which are regularly used to haul freight and passengers shall be taxed upon the basis of the gross weight schedule established in section 6-201 [32-3301]. School buses shall not be exempt if they enter charter service.

History: En. Sec. 6-207, Ch. 197, L. 1965.

32-3308. Additional fees—quarterly payment. When the gross weight of a vehicle exceeds twenty-four thousand (24,000) pounds, the additional fees for motor trucks, trailers, tractors, pole trailers, or semitrailers may be purchased for a three months' period for one-fourth ($\frac{1}{4}$) the regular fee at the beginning of any quarter of the calendar year. For each fee so paid other than at the time of payment of the basic license fee, an additional fee of one dollar (\$1) shall be charged. The department may adopt rules relative to the issuance and display of certificates or insignia, which shall state the quarters for which the vehicle is licensed.

History: En. Sec. 6-208, Ch. 197, L. 1965; amd. Sec. 114, Ch. 316, L. 1974.

partment" for "commission" in the last sentence; and made minor changes in phraseology.

Amendments

The 1974 amendment substituted "de-

32-3309. Failure to pay additional fees—penalty. A vehicle licensed under section 32-3308 may not be operated over the public highways

unless the owner or operator of the vehicle, within ten (10) calendar days or seven (7) business days as provided by law, whichever is greater, after the expiration of the three-month period, pays the required fee for a license for an additional three-month period, or for the remainder of the year. A person who operates a vehicle upon the public highways after the expiration of the ten (10) calendar days or seven (7) business days as provided by law, whichever is greater, is guilty of a misdemeanor. In addition he shall be required to purchase a gross weight license for the vehicle involved at the fee covering an entire year's license for operation of the vehicle, less the fees for a period of the year already paid. If, within five (5) days thereafter, no license for a full year has been purchased as required, the Montana highway patrol, county sheriff or city police may impound the vehicle in the manner which is directed for these cases by the highway patrol chief until the requirement is met.

History: En. Sec. 6-209, Ch. 197, L. 1965; amd. Sec. 2, Ch. 292, L. 1967; amd. Sec. 115, Ch. 316, L. 1974.

Amendments

The 1967 amendment substituted "ten (10) calendar days or seven (7) business days as provided by law, whichever is greater" for "ten (10) days" wherever

found in this section; and substituted "may" for "shall" after "city police" in the last sentence.

The 1974 amendment substituted "highway patrol chief" for "supervisor of the Montana highway patrol" in the last sentence; and made minor changes in phraseology.

32-3310. Three-unit combination—fees in lieu of gross weight fees otherwise provided—marking. (1) Instead of the gross weight fees provided in sections 32-3301 through 32-3308, the owner of a motor truck or truck-tractor used on the highways of the state in connection with two (2) trailers or semitrailers at the same time shall register them as a three (3) unit combination in the following manner:

(a) By paying the registration and other fees covering the maximum practical gross vehicle weight for the truck or truck-tractor, but not less than the actual operating gross weight under sections 53-114, 53-122, 32-3301 and 32-3303.

(b) By registering the trailers in accordance with sections 53-114 and 53-122, and by paying the gross vehicle weight fee prescribed for the maximum trailing load in accordance with sections 32-3302 and 32-3303 on the combined gross weight of the two (2) trailers or semitrailers, treating them as if they were a single unit.

(2) This section does not authorize axle loads in excess to those established by sections 32-1123.1 through 32-1123.11.

History: En. Sec. 6-210, Ch. 197, L. 1965; amd. Sec. 116, Ch. 316, L. 1974.

Amendments

The 1974 amendment substituted reference to "section 53-122" in subdivision (1)(b) for reference to section 53-112; deleted a former subsection (2) which read "Vehicles on which fees are paid in ac-

cordance with this section shall have marked thereon the gross weight for which fees have been paid, and shall bear a distinctive mark designated by the commission"; substituted reference to sections 32-1123.1 through 32-1123.11 in subsection (2) for reference to 32-1123; and made minor changes in phraseology and punctuation.

32-3311. Repealed.

Repeal

Section 32-3311 (Sec. 6-211, Ch. 197, L. 1965), relating to markings of weight or

capacity on trucks, truck-tractors and buses, was repealed by Sec. 2, Ch. 37, Laws 1971.

32-3312. Additional fees on motor trucks, truck-tractors, trailers and semitrailers from other states. (1) In lieu of other fees for the licensing of vehicles, there shall be collected a fee for each motor truck, truck-tractor, trailer, and semitrailer already licensed for the year in another jurisdiction and operated upon an itinerant basis in this state. The fee shall be collected upon each entrance of such vehicle into the state, and shall be based upon the number of miles to be traveled in the state as shown in the application of the nonresident operator.

(2) The fee shall be collected for any single vehicle. When any combination of truck, truck-tractor, semitrailer, or trailer totals more than six thousand (6,000) pounds gross weight, the fee shall be collected for each unit in the combination.

(3) The fee shall be:

(a) Five dollars (\$5) for each trip of two hundred (200) miles or less.

(b) Seven dollars and fifty cents (\$7.50) for each trip of over two hundred (200) miles to four hundred (400) miles.

(c) Ten dollars (\$10) for each trip of over four hundred (400) miles.

(4) Such fees shall not apply to any trailer the principal use of which is as temporary or permanent living quarters, or to any vehicle of a carnival which is under contract with a state, county, or district fair association.

History: En. Sec. 6-212, Ch. 197, L. 1965.

32-3313. Temporary trip permits showing payment of fees—display.

(1) Temporary trip permits showing payment of the fees provided for in section 32-3312 shall be issued under rules prescribed by the department. The permit shall be displayed in the vehicle for which the fee has been paid at all times while the vehicle is being operated on the highways of this state by posting it where it may be read.

(2) The department may limit the operation of the vehicle in this state to a definite period of time.

History: En. Sec. 6-213, Ch. 197, L. 1965; amd. Sec. 117, Ch. 316, L. 1974. department" for "commission" in two places; and made minor changes in phraseology.

Amendments

The 1974 amendment substituted "de-

32-3314. Time for payment of fees by nonresidents. A nonresident owner or operator of a motor truck, truck-tractor, trailer or semitrailer shall, immediately upon arrival in the state, contact the nearest highway patrol office, any department office, the county sheriff, or the county treasurer's office to pay the fee and secure the permit prescribed. All fees collected shall immediately be remitted to the county treasurer.

History: En. Sec. 6-214, Ch. 197, L. 1965; amd. Sec. 118, Ch. 316, L. 1974. department office" for "any commission office."

Amendments

The 1974 amendment substituted "any

Cross-References

Highway patrol functions transferred, sec. 82A-1206.

32-3315. Sales tax on new motor vehicles. (1) In consideration of the right to use the highways of the state, there shall be imposed a tax

upon all sales of new motor vehicles for which a license is sought and an original application for title is made. The word motor vehicle as used in this section means automobiles, auto trucks and motorcycles, propelled by their own power, used upon the public highways of the state. The tax shall be paid by the purchaser when he applies for his original Montana license through the county treasurer.

(2) The sales tax shall be:

(a) One and one-half per cent ($1\frac{1}{2}\%$) of the F.O.B. factory list price or F.O.B. port of entry list price, during the first quarter of the year or prorated one-twelfth ($1/12$) for each month or part of month for a registration period other than a calendar year or calendar quarter.

(b) One and one-eighth per cent ($1\frac{1}{8}\%$) of the list price during the second quarter of the year.

(c) Three-fourths ($\frac{3}{4}$) of one per cent (1%) during the third quarter of the year.

(d) Three-eighths ($\frac{3}{8}$) of one per cent (1%) during the fourth quarter of the year.

(3) If the manufacturer or importer fails to furnish the F.O.B. factory list price or F.O.B. port of entry list price, the department may use published price lists.

(4) The proceeds from this tax shall be remitted to the state treasurer every thirty (30) days for credit to the state highway account of the earmarked revenue fund.

(5) The new vehicle is not subject to any other assessment or taxation during the calendar year in which the original application for title is made.

History: En. Sec. 6-215, Ch. 197, L. 1965; amd. Sec. 5, Ch. 290, L. 1967; amd. Sec. 119, Ch. 316, L. 1974; amd. Sec. 15, Ch. 74, L. 1975.

Amendments

The 1967 amendment, in subsection (1), deleted "passenger" before "motor vehicles" and added the present second sentence; substituted "earmarked revenue fund of the state highway account" for "commission" at the end of subsection (4); deleted "whether or not it is in the state on the first day of January of that year" at the end of subsection (5); and deleted subsection (6), which read, "The tax herein imposed shall not apply to any motor vehicle assessed pursuant to the provisions of section 84-406."

The 1974 amendment substituted "department" in subsection (3) for "highway commission"; substituted "state highway account of the earmarked revenue fund" in subsection (4) for "earmarked rev-

enue fund of the state highway account"; and made minor changes in phraseology.

The 1975 amendment added "or prorated one-twelfth ($1/12$) for each month or part of month for a registration period other than a calendar year or calendar quarter" to subdivision (2)(a).

Repealing Clause

Section 6 of Ch. 290, Laws 1967 read "That section 84-6009, Revised Codes of Montana, 1947, is repealed."

Effective Date

Section 7 of Ch. 290, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 2, 1967.

Section 16 of Ch. 74, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved March 19, 1975.

References

Swartz v. Berg, 147 M 178, 411 P 2d 736.

32-3315.1. Demonstration of trucks and trailers authorized—dealer's plate to be used. A new or used truck or trailer dealer licensed under section 53-118 may not demonstrate to a prospective purchaser a truck, truck tractor, trailer or semitrailer, owned by or consigned to the dealer,

or otherwise controlled by the dealer, without securing a demonstration permit and paying the fees required in section 32-3315.2. The vehicle must display the dealer's registration plate or other current Montana registration and the demonstration permit.

History: En. Sec. 1, Ch. 209, L. 1971; Sec. 53-118.6, R. C. M. 1947; amd. and redes. 32-3315.1 by Sec. 168, Ch. 316, L. 1974.

Title of Act

An act requiring a licensed truck or trailer dealer to secure a demonstration permit for purposes of demonstration only, affixing the fees and terms of said permits, affixing a penalty and repealing sections 53-118.1, 53-118.2, 53-118.3, 53-118.4 and 53-118.5, R. C. M. 1947, enacted as section 2, Chapter 36, Laws of 1965.

Amendments

The 1974 amendment renumbered this section; substituted "without securing a demonstration permit and paying the fees required in section 32-3315.2" in the first sentence for "by payment of the fees required in this section"; substituted the second sentence for "provided the vehicle displays the dealer's registration plate or other current Montana registration and the demonstration permit provided in Title 32, chapter 33, R. C. M. 1947, chapter 197, Laws of 1965"; and made minor changes in phraseology and punctuation.

32-3315.2. Application for truck demonstration permit—form and contents—number of permits authorized. The licensed dealer shall obtain the demonstration permit upon application to the department and the payment of eight dollars (\$8) for each permit; the payment of this fee is in lieu of fees required under this chapter. The form of the permit and the application for it shall be provided by the department under rules it prescribes. The permit shall be designed so that the licensed dealer may fill in the necessary information on it and so that the permit will be validated by the dating, inserting of name and address of the prospective purchaser, and affixing thereto the signature of the licensed dealer. The licensed dealer may obtain more than one (1) but not more than five (5) demonstration permits with each application.

History: En. Sec. 2, Ch. 209, L. 1971; Sec. 53-118.7, R. C. M. 1947; amd. and redes. 32-3315.2 by Sec. 169, Ch. 316, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted references to department for references to the state highway commission; and made minor changes in phraseology.

32-3315.3. Operation under truck demonstration permit—period of permit—rental under permit prohibited. (1) A vehicle displaying the permit may be operated either laden or unladen. The permit expires seven (7) days after the date of validation by the licensed dealer.

(2) A demonstration permit may not be issued to the same prospective purchaser for the demonstration of the same vehicle or vehicles for more than one (1) seven (7) day period.

(3) The vehicle operating with the demonstration permit may not be leased or rented by the licensed dealer or operated for compensation by the licensed dealer.

History: En. Sec. 3, Ch. 209, L. 1971; Sec. 53-118.8, R. C. M. 1947; amd. and redes. 32-3315.3 by Sec. 170, Ch. 316, L. 1974.

Amendments

The 1974 amendment renumbered this section; and made minor changes in phraseology and style.

32-3315.4. Violation of truck demonstration provisions. Violation of sections 32-3315.1 through 32-3315.3 is a misdemeanor and subject to the

penalties under section 32-3316. For the purposes of this section, a licensed dealer shall be considered the owner.

History: En. Sec. 4, Ch. 209, L. 1971; Sec. 53-118.9, R. C. M. 1947; amd. and redes. 32-3315.4 by Sec. 171, Ch. 316, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "sections 32-3315.1 through 32-3315.3" for "any provision of this section"; and made minor changes in phraseology.

32-3315.5. Disposition of truck demonstration fees. Fees collected under section 32-3315.2 shall be disposed of in the manner provided in section 32-3204.

History: En. Sec. 5, Ch. 209, L. 1971; Sec. 53-118.10, R. C. M. 1947; amd. and redes. 32-3315.5 by Sec. 172, Ch. 316, L. 1974.

3315.2" for "under this section"; and made a minor change in style.

Amendments

The 1974 amendment renumbered this section; substituted "under section 32-

Repealing Clause

Section 6 of Ch. 209, Laws 1971 read "Sections 53-118.1, 53-118.2, 53-118.3, 53-118.4 and 53-118.5, R. C. M. 1947, enacted as in section 2, Ch. 36, Laws of 1965, are hereby repealed."

32-3316. Violation—penalty. Any owner or operator of a motor truck, truck-tractor, trailer, semitrailer, bus or automobile who violates any provision of this part [chapter] is guilty of a misdemeanor and shall be punished by a fine of not more than three hundred dollars (\$300), or by a sentence of not more than sixty (60) days in the county jail, or both.

History: En. Sec. 6-216, Ch. 197, L. 1965.

32-3317. Excess weight—penalties. (1) The operator is subject to the penalties stated in this section whenever the gross laden weight of any motor truck, truck-tractor, trailer, or semitrailer operated upon any highway in this state exceeds:

(a) The gross vehicle weight shown on the owner's certificate of registration and tax receipt issued under section 53-107, or

(b) The gross vehicle weight shown on the gross vehicle weight receipt issued under section 32-3205.1.

(2) The operator shall:

Immediately thereafter pay to the nearest county treasurer or to the department the difference between the fee already paid and that applicable to the gross weight of his vehicle before unloading the excess, provided that it does not exceed the legal axle weight.

History: En. Sec. 6-217, Ch. 197, L. 1965; amd. Sec. 1, Ch. 37, L. 1971; amd. Sec. 120, Ch. 316, L. 1974.

Amendments

The 1971 amendment deleted former paragraph (a) of subsection (1); redesignated former paragraphs (b) and (c) of subsection (1) as (a) and (b) respectively; deleted former paragraphs (a) and (c) of subsection (2); inserted "or state highway commission" after "nearest county treasurer" in former paragraph (b), now

the sole paragraph of subsection (2); and deleted former subsection (3).

The 1974 amendment substituted "section 32-3205.1" in subdivision (1)(b) for "section 53-620"; substituted "department" in subsection (2) for "state highway commission"; and made minor changes in phraseology.

Repealing Clause

Section 2 of Ch. 37, Laws 1971 read "Section 32-3311, R. C. M., 1947, is repealed."

32-3318. Enforcement. The highway patrol, and any designated employee of the department of highways, shall enforce chapters 32 and 33 of this title, and those persons shall examine and inspect the motor vehicles operating upon the highways in this state, and regulated by those chapters, to ascertain whether or not those chapters are being complied with.

History: En. Sec. 10, Ch. 219, L. 1951; amd. Sec. 1, Ch. 156, L. 1955; Sec. 53-624, R. C. M. 1947; amd. and redes. 32-3318 by Sec. 182, Ch. 316, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "department of high-

ways" for "state highway commission"; substituted "chapters 32 and 33 of this title" for "the provisions of this act"; substituted "motor vehicles" for "trucks, trailers and semitrailers, buses, or automobiles"; inserted "and regulated by those chapters"; and made minor changes in phraseology, punctuation and style.

32-3319. Exemptions. Motor vehicles operating exclusively for transportation of persons for hire within the limits of incorporated cities or towns and within fifteen (15) miles from such limits are exempt from chapters 32 and 33 of this title; motor vehicles brought or driven into Montana by a nonresident migratory bona fide agricultural worker temporarily employed in agricultural work in this state where those motor vehicles are used exclusively for transportation of agricultural workers are also exempt from those chapters. Vehicles lawfully displaying a licensed dealer's plate as provided in section 53-122 are exempt from those chapters when moving to or from a dealer's place of business when unladen or laden with dealer's property only, and, in the case of vehicles having a gross laden weight of less than twenty-four thousand (24,000) pounds, while in the process of demonstration in the course of the dealer's business.

History: En. Sec. 12, Ch. 219, L. 1951; amd. Sec. 1, Ch. 262, L. 1967; amd. Sec. 1, Ch. 46, L. 1973; Sec. 53-626, R. C. M. 1947; amd. and redes. 32-3319 by Sec. 183, Ch. 316, L. 1974.

Amendments

The 1967 amendment added "and further providing all vehicles lawfully displaying a licensed dealer's plate as provided in section 53-122, Revised Codes of Montana, 1947, shall be exempt from the provisions of this act when moving to or from a dealer's place of business when

unladen or laden with dealer's property only."

The 1973 amendment added "and, in the case of vehicles having a gross laden weight of less than twenty-four thousand (24,000) pounds, while in the process of demonstration in the course of the dealer's business."

The 1974 amendment renumbered this section; substituted "chapters 32 and 33 of this title" and "those chapters" for "the provisions of this act"; and made minor changes in phraseology and style.

32-3320. Purpose of fees. The fees provided in chapters 32 and 33 of this title are in consideration of the right to use the highways of the state of Montana.

History: En. Sec. 13, Ch. 219, L. 1951; Sec. 53-627, R. C. M. 1947; amd. and redes. 32-3320 by Sec. 184, Ch. 316, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "in chapters 32 and 33 of this title" for "in this act"; and deleted a final clause making the act effective January 1, 1952.

CHAPTER 34—FEES FOR DRIVE-AWAY OR TOW-AWAY
TRANSPORTERS

- Section 32-3401. Permit and transit plates for new vehicles being transported by drive-away or tow-away methods.
- 32-3402. One-trip fee in addition to permit and plate fees, payable quarterly.
- 32-3403. Disposition of funds collected.
- 32-3404. Fees provided for are in addition to fees now payable under Title 8, Chapter 1.
- 32-3405. Fees provided are in lieu of other fees payable—election to pay other fees.
- 32-3406. Exemptions from fees.
- 32-3407. Display of plates.
- 32-3408. List of holders of permits and transit plates to be furnished department of highways by department of justice.

32-3401. Permit and transit plates for new vehicles being transported by drive-away or tow-away methods. (1) A person, firm, partnership or corporation, regularly and lawfully engaged in the transportation of new vehicles over the highways of this state from manufacturing or assembly points to agents of manufacturers and dealers in this state or in other states, territories, foreign countries or provinces, by the drive-away or tow-away methods, where the vehicles being driven, towed or transported by the saddle-mount, tow-bar or full-mount methods, or a lawful combination of these methods, will be transported over the highways of the state but once, may annually apply to the department of justice for a permit to use the highways of this state, and shall pay, upon filing the application, a fee of one hundred dollars (\$100). Upon processing of the application, that department shall issue an annual permit to the applicant.

(2) The permit holder may also apply to the department of justice for a sufficient number of distinctive transit plates or devices showing the permit number for identification of the vehicles being transported by the permit holder, and the plates or devices may be used on a vehicle being driven, towed or transported by and under the control of the permit holder. That department shall collect the additional sum of one dollar (\$1) for each pair of transit plates or devices applied for and issued.

(3) The department of justice shall retain the permit and plate fees to defray costs of administering this act.

(4) The permit and transit plates or devices expire on December 31 of each year.

History: En. Sec. 6-401, Ch. 197, L. 1965; amd. Sec. 121, Ch. 316, L. 1974.

Compiler's Note

This chapter was designated as Part 4 of Chapter 6 of the Highway Code, entitled "Fees for Drive-Away or Tow-Away Transporters." There was no Part 3 of Chapter 6.

Amendments

The 1974 amendment substituted "department of justice" and "department" for "registrar of motor vehicles" throughout the section; and made minor changes in phraseology and punctuation.

32-3402. One-trip fee in addition to permit and plate fees, payable quarterly. In addition to the permit and plate fees, a permit holder shall pay to the department of justice a one-trip fee of five dollars (\$5) per driven vehicle. The fee shall be paid within fifteen (15) days after the

end of the calendar quarter upon forms recommended or supplied by that department.

History: En. Sec. 6-402, Ch. 197, L. 1965; amd. Sec. 122, Ch. 316, L. 1974.

Amendments

The 1974 amendment substituted "department of justice" and "that department" for "registrar of motor vehicles."

32-3403. Disposition of funds collected. The department of justice shall retain five per cent (5%) of the funds collected in payment of the trip fees to defray costs of administration. The remaining ninety-five per cent (95%) shall be transferred, on or before the fifteenth day of each month after collection, to the credit of the department of highways.

History: En. Sec. 6-403, Ch. 197, L. 1965; amd. Sec. 123, Ch. 316, L. 1974; amd. Sec. 2, Ch. 286, L. 1977.

Amendments

The 1974 amendment substituted "department of justice" for "registrar of

motor vehicles" at the beginning of the section and "department of highways" for "commission" at the end.

The 1977 amendment deleted "to the state treasurer for deposit" before "to the credit" in the last sentence; and made a minor change in phraseology.

32-3404. Fees provided for are in addition to fees now payable under Title 8, Chapter 1. The fees provided for drive-away or tow-away transportation are in addition to any fees payable by for-hire carriers under the provisions of Chapter 1, Title 8, Revised Codes of Montana, 1947, as amended.

History: En. Sec. 6-404, Ch. 197, L. 1965.

32-3405. Fees provided are in lieu of other fees payable—election to pay other fees. The fees provided for drive-away or tow-away transporters are declared to be in consideration of the right to use the highways of the state, and are in lieu of all other fees including those which might be payable, under the provisions of part 2 of this chapter [chapter 33 of this title]. However, any operator may elect to pay the fees payable under the provisions of that part [chapter].

History: En. Sec. 6-405, Ch. 197, L. 1965.

32-3406. Exemptions from fees. The fees provided for drive-away or tow-away transporters shall not apply to:

- (1) Vehicles regularly used in the hauling of vehicles by the truck-away method, or to the vehicles so transported.
- (2) Vehicles operated under dealers' licenses or plates.
- (3) Vehicles registerable under any other provisions of law.
- (4) Any person not issued a drive-away or tow-away permit.

History: En. Sec. 6-406, Ch. 197, L. 1965.

32-3407. Display of plates. A vehicle or combination of vehicles transported over the highways of the state by a permit holder shall display in a prominent position thereon, the distinctive transit plates or devices, the towing vehicle displaying such on the front thereof and a towed vehicle on the rear thereof.

History: En. Sec. 3, Ch. 133, L. 1953; Sec. 53-632, R. C. M. 1947; amd. and redes. 32-3407 by Sec. 185, Ch. 316, L. 1974.

Amendments

The 1974 amendment renumbered this section; and made minor changes in phraseology.

32-3408. List of holders of permits and transit plates to be furnished department of highways by department of justice. The department of justice shall furnish the department of highways a list of the permit holders and of the transit plates or devices issued to those permit holders.

History: En. Sec. 4, Ch. 133, L. 1953; Sec. 53-633, R. C. M. 1947; amd. and redes. 32-3408 by Sec. 186, Ch. 316, L. 1974.

section; substituted "department of justice" for "registrar of motor vehicles"; substituted "department of highways" for "state highway commission"; and made minor changes in phraseology.

Amendments

The 1974 amendment renumbered this

CHAPTER 35—BOND ISSUES FOR STATE TOLL BRIDGES

(Repealed—Section 209, Chapter 316, Laws of 1974)

32-3501 to 32-3509. Repealed.

Repeal

Sections 32-3501 to 32-3509 (Secs. 6-501 to 6-509, Ch. 197, L. 1965; Sec. 29, Ch.

234, L. 1971), relating to bond issues for state toll bridges, were repealed by Sec. 209, Ch. 316, Laws of 1974.

CHAPTER 36—COUNTY TAX LEVIES FOR ROAD AND BRIDGE CONSTRUCTION

Section 32-3601. General road tax.

32-3602. Special bridge taxes—levy and collection.

32-3603. Suburban railway to pay county for use of bridge.

32-3604. Special tax for construction and maintenance.

32-3605. Additional tax levy for road and bridge construction.

32-3601. General road tax. (1) To raise revenue for the construction, maintenance, or improvement of public highways, each board of county commissioners may levy a general tax upon the taxable property in the county of not more than twelve (12) mills, except in fourth, fifth, sixth and seventh class counties which may levy not more than fifteen (15) mills, payable to the county treasurer. The tax from freeholders shall be collected the same as other taxes, and from nonfreeholders as the board may direct.

(2) This section shall not apply to incorporated cities and towns which, by ordinance, provide for the levy of a like tax for road, street, or alley purposes.

(3) All moneys collected under this section shall belong to the county road fund.

History: En. Sec. 7-101, Ch. 197, L. 1965; amd. Sec. 1, Ch. 83, L. 1967; amd. Sec. 1, Ch. 199, L. 1971.

way Code, entitled "County Finance." This chapter was designated as Part 1 of Chapter 7, entitled "Tax Levies for Road and Bridge Construction."

Compiler's Note

Chapters 36 to 38, inclusive, of this title were designated as Chapter 7 of the High-

Amendments

The 1967 amendment increased the tax

limit in subsection (1) from 10 to 12 mills.

The 1971 amendment inserted "except in fourth, fifth, sixth and seventh class

counties which may levy not more than fifteen (15) mills" in the first sentence of subsection (1).

32-3602. Special bridge taxes—levy and collection. (1) Each board may levy a special tax not to exceed three (3) mills on all taxable property in the county for the purpose of constructing, maintaining and repairing free public bridges.

(2) An additional levy for these purposes may be made under the following conditions:

(a) In any county where the total linear feet of bridges or bridge construction is more than four thousand (4,000) feet and the taxable value of property in that county is four million dollars (\$4,000,000) or less, the board may, if necessary, levy one (1) mill.

(b) In counties where the total linear feet of bridges or bridge construction is more than six thousand (6,000) feet and the taxable value of property in that county is not less than four million dollars (\$4,000,000) nor more than twenty million dollars (\$20,000,000), the board may, if necessary, levy two (2) mills.

(3) For the purposes of this section, a free public bridge is defined as any drainage structure located on, over or through any road or highway.

(4) These taxes must be levied and collected in the same manner as other taxes. The money shall be kept as a special bridge fund, subject to the order of the board for use as herein provided, and shall not be transferable to any other fund.

History: En. Sec. 7-102, Ch. 197, L. 1965; amd. Sec. 1, Ch. 57, L. 1973.

maximum taxable value of property specified in subdivision (2) (b) from twelve million dollars to twenty million dollars.

Amendments

The 1973 amendment increased the

32-3603. Suburban railway to pay county for use of bridge. (1) Before any bridge constructed and maintained by the county in any city or town may be used as a part of any street or suburban railway, the owner of that railway shall pay into the county bridge fund a sum determined by the board which shall not be less than one-fourth ($\frac{1}{4}$) nor more than one-half ($\frac{1}{2}$) of the cost of construction of the bridge.

(2) The railway owner shall also pay such portion of the cost of maintaining the bridge (not less than one-fourth [$\frac{1}{4}$] nor more than one-half [$\frac{1}{2}$]) as is determined by the board during the time the bridge is used by the railway.

History: En. Sec. 7-103, Ch. 197, L. 1965.

32-3604. Special tax for construction and maintenance. Each board may levy a special tax not to exceed five (5) mills on the taxable property in the county to defray the costs of any bridge required to be constructed and maintained by the county in any city or town.

History: En. Sec. 7-104, Ch. 197, L. 1965.

32-3605. Additional tax levy for road and bridge construction. (1) Each board may make an additional levy upon the taxable property in the county of ten (10) mills or less for constructing public highways and bridges.

(2) Before the additional levy may be made, the question shall be submitted to a vote of the people at some general or special election in the following form, inserting the number of mills to be levied and the name of the county: "Shall there be an additional levy of _____ mills upon the taxable property in the county of _____, state of Montana, for the purpose of constructing public highways and bridges?"

☐ Yes

☐ No."

(3) A majority of the votes cast shall be necessary to permit the additional levy which shall be collected in the same manner as other road taxes.

History: En. Sec. 7-105, Ch. 197, L. 1965.

CHAPTER 37—LOCAL USE OF REGISTRATION AND OTHER VEHICLE FEES

- Section 32-3701. County motor vehicle fund.
 32-3702. Population centers—city road fund—county road fund.
 32-3703. Population centers—use of city road fund.
 32-3706. Use of county road fund.
 32-3707. [Transferred.]

32-3701. County motor vehicle fund. All license and registration fees collected by the treasurer of the county in which any motor vehicle is registered shall be credited to the county motor vehicle fund.

History: En. Sec. 7-201, Ch. 197, L. 1965. **Compiler's Note**

This chapter was designated as Part 2 of Chapter 7 of the Highway Code, entitled "Registration and Other Fees."

32-3702. Population centers—city road fund—county road fund. (1) The county treasurer shall segregate from the county motor vehicle fund, and designate as the "city road fund" fifty per cent (50%) of the net license fees derived from the registration of motor vehicles whose owners reside within the limits of any incorporated city or town.

(2) The balance of the county motor vehicle fund remaining after segregation of the city road fund shall be transferred to the "county road fund."

History: En. Sec. 7-202, Ch. 197, L. 1965; amd. Sec. 1, Ch. 89, L. 1967; amd. Sec. 1, Ch. 467, L. 1975.

Amendments

The 1967 amendment substituted "1930" for "1960" in subdivision (a)(i) and (a)(ii), and substituted "1950" for "1960" in subdivision (b).

The 1975 amendment combined subsection (1) and subdivision (1)(a); added "or town" to the end of subsection (1); and deleted former items (a)(i) and (a)(ii), and a subdivision (1)(b), which read "(i) Having a population of thirty-five thousand (35,000) or more according to the federal census of 1930, or
 "(ii) Lying within one (1) mile of the

limits of an incorporated city having a population of thirty-five thousand (35,000) or more according to the federal census of 1930.

"(b) Twenty-five per cent (25%) of the net license fees derived from the registration of motor vehicles whose owners reside within the limits of any incorporated city having a population of ten thousand (10,000) or more according to the federal census of 1950, which city is located in a county which has an area of

less than seven hundred and fifty (750) square miles."

Repealing Clause

Section 2 of Ch. 89, Laws 1967 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 89, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 21, 1967.

32-3703. Population centers—use of city road fund. (1) At the end of each month, the county treasurer shall pay to the appropriate city treasurer the fees held in the city road fund.

(2) The city treasurer shall hold the fees so paid in a separate "city road fund," which shall be used by the city council only for the construction, repair, and maintenance of permanent highways and streets within the corporate limits.

History: En. Sec. 7-203, Ch. 197, L. 1965; amd. Sec. 2, Ch. 467, L. 1975.

Amendments

The 1975 amendment deleted subsections (3) and (4) which read "(3) All such work shall be under the supervision of the county road superintendent, who shall co-operate with the city council in designating the highway or street upon

which work is to be done and in selecting the type of pavement to be used. (4) The cost of supervision by the county surveyor shall not exceed five per cent (5%) of the cost of the work."

Repealing Clause

Section 3 of Ch. 467, Laws 1975 read "Sections 32-3704 and 32-3705, R. C. M. 1947, are repealed."

32-3704, 32-3705. Repealed.

Repeal

Sections 32-3704 and 32-3705 (Secs. 7-204, 7-205, Ch. 197, L. 1965; Sec. 1, Ch. 467, L. 1967), relating to separate city and

county road funds, and the use of the city road funds, were repealed by Sec. 3, Ch. 467, Laws of 1975.

32-3706. Use of county road fund. The county road fund of each county shall be used for the construction, repair, and maintenance of all public highways within its boundaries which are outside the corporate limits of any city or town and are not either state or federal highways.

History: En. Sec. 7-206, Ch. 197, L. 1965.

32-3707. [Transferred.]

Compiler's Notes

Section 124, Ch. 316, Laws of 1974 renumbered this section as sec. 53-639.1.

CHAPTER 38—COUNTY ROAD AND BRIDGE BONDS

- Section 32-3801. County commissioners may issue bonds.
- 32-3802. Negotiations for refunding.
- 32-3803. Single purpose highway—bridge.
- 32-3804. Limitation on amount of bonds—issuance in excess of limitations void.
- 32-3805. Term—power to redeem—maximum interest.
- 32-3806. Form of bonds.

32-3801. County commissioners may issue bonds. (1) Each board may issue, negotiate and sell coupon bonds on the credit of the county:

(a) To construct or improve, or acquire rights of way for public highways; or bridges.

(b) To refund, pay and redeem optional, redeemable or maturing highway or bridge bonds when there are not sufficient funds available and it is deemed in the best interests of the county to refund the bonds.

(2) The value of the bonds issued and all other outstanding indebtedness of the county shall not exceed five per cent (5 %) of the value of the taxable property within the county as ascertained by the last preceding general assessment.

(3) The bonds shall be issued as provided in section 16-2008.

History: En. Sec. 7-301, Ch. 197, L. 1965.

Compiler's Note

This chapter was designated as Part 3 of Chapter 7 of the Highway Code, entitled "Bonds."

32-3802. Negotiations for refunding. (1) Whenever the total indebtedness of a county exceeds five per cent (5%) of the value of the taxable property therein and the board determines that the county is unable to pay such indebtedness in full, the board may:

(a) Negotiate with the bondholders for an agreement or agreements whereby the bondholders agree to accept less than the full amount of the bonds and the accrued unpaid interest thereon in satisfaction thereof.

(b) Enter into such agreement or agreements.

(c) Issue refunding bonds for the amount agreed upon. These bonds may be issued in more than one series and each series may be either amortization or serial bonds.

(2) The plan agreed upon between the board and the bondholders shall be embodied in full in the resolution providing for the issue of the bonds.

History: En. Sec. 7-302, Ch. 197, L. 1965; amd. Sec. 14, Ch. 100, L. 1973.

stitutional limitation of" before "five per cent" in the preliminary paragraph of subsection (1).

Amendments

The 1973 amendment deleted "the con-

32-3803. Single purpose highway—bridge. (1) It shall be deemed a single purpose to:

(a) Acquire a right of way for and construct a public highway including any bridge or bridges thereon.

(b) Contribute to the cost of a federal-aid bridge.

(c) Contribute to the cost of a federal-aid highway project on a highway leading to a federal-aid bridge.

(2) Construction of two or more bridges not forming a part of the same public highway shall be deemed separate purposes.

(3) Nothing contained in this section shall be construed as amending or repealing sections 16-1163—16-1165.

History: En. Sec. 7-303, Ch. 197, L. 1965.

32-3804. Limitation on amount of bonds—issuance in excess of limitations void. (1) Except as otherwise provided hereafter and in section 16-2010, no county shall issue bonds which, with all outstanding bonds and warrants, except county high school bonds and emergency bonds, will exceed two and one-half per cent ($2\frac{1}{2}\%$) of the value of the taxable property therein. The taxable property shall be ascertained by the last assessment for state and county taxes prior to the issuance of such bonds.

(2) A county may issue bonds which, with all outstanding bonds and warrants will exceed two and one-half per cent ($2\frac{1}{2}\%$), but will not exceed five per cent (5%) of the value of such taxable property, when necessary for the purpose of replacing, rebuilding, or repairing county buildings, bridges or highways which have been destroyed or damaged by an act of God, disaster, catastrophe, or accident.

(3) All bonds issued by any county in excess of the limitations herein fixed shall be null and void, except that the limitations shall not apply to refunding bonds issued to pay or retire county bonds lawfully issued prior to January 1, 1932.

History: En. Sec. 7-304, Ch. 197, L. 1965; amd. Sec. 15, Ch. 100, L. 1973; amd. Sec. 13, Ch. 391, L. 1973.

Amendments

Each of the 1973 amendments deleted a subsection (4) defining "value of the taxable property" in the same sense as in section 5 of article XIII of the 1889 constitution.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 100, and once by Ch. 391. The amendments were identical.

32-3805. Term—power to redeem—maximum interest. (1) Bonds issued under subsection (1) of section 32-3801 may not be issued for a longer term than twenty (20) years.

(2) A bond issued under subsection (1) (b) of that section may not be issued for a term longer than ten (10) years, except that:

(a) If the unexpired term of the bonds to be refunded is greater than ten (10) years, the refunding bonds may be issued for the unexpired term; or

(b) If the ten (10) year term requires an annual tax levy for payment of the refunding bonds which exceeds ten (10) mills on all property subject to taxation, the term may be so extended as to reduce the annual levy to ten (10) mills. In no event shall the term exceed twenty (20) years.

(3) All bonds issued for a term longer than five (5) years shall be redeemable at the option of the county five (5) years after the date of issue and on any payment due date thereafter before maturity. This statement shall appear on the face of each bond.

(4) Interest shall be payable semiannually.

History: En. Sec. 7-305, Ch. 197, L. 1965; amd. Sec. 30, Ch. 234, L. 1971; amd. Sec. 125, Ch. 316, L. 1974.

Amendments

The 1971 amendment deleted from the beginning of subsection (4) "The maximum rate of interest which any bonds shall bear is six per cent (6%) per annum"; and made a minor change in style.

The 1974 amendment substituted “under subsection (1)(b) of that section” in subsection (2) for “under subsection (2) of that section”; and made minor changes in phraseology and style.

32-3806. Form of bonds. (1) All bonds issued by any county shall be either amortization bonds or serial bonds. Amortization bonds shall be issued in preference to serial bonds.

(2) The term “amortization bonds” means that form of bond on which a part of the principal is required to be paid each time interest becomes due and payable. The part payment of principal increases with each following installment in the same amount the interest payment decreases, so that the combined amount payable on principal and interest is the same on each interest payment date. However, the final payment may vary in amount from the other payments to the extent resulting from disregarding fractional cents in the other payments.

(3) The term “serial bonds” means a bond issue payable in equal annual installments, one (1) installment consisting of one (1) or more bonds becoming due and payable each year. The amount to be paid and redeemed each year shall be determined by dividing the total amount of the bonds to be issued by the total number of years the issue is to run, so that the total amount of principal to be paid each year will be the same. The amount of installments becoming due and payable the first year, or the first and second years, may vary from the others to the extent which results from fixing the amounts of each bond of the other installments at one hundred dollars (\$100), five hundred dollars (\$500) or one thousand dollars (\$1,000) as may be determined by the board.

History: En. Sec. 7-306, Ch. 197, L. 1965.

CHAPTER 39—ACQUISITION AND DISPOSITION OF PROPERTY BY STATE

- Section** 32-3901. Rights acquired by public in highway.
 32-3902. General power of department to acquire interests in property.
 32-3903. Purposes for which property acquired.
 32-3904. Exercise of right of eminent domain—presumption.
 32-3905. Acquisition of whole parcel—sale of excess.
 32-3906. Power to acquire for future.
 32-3907. Road building materials.
 32-3908. No compensation in certain cases—exceptions.
 32-3909. Exchange of interests in real property.
 32-3910. Sale of interests in real property.
 32-3911. Conduct of sale.
 32-3912. Option of original owner or successor in interest to purchase at sale price.
 32-3913. Private sale if no bid or offer.
 32-3914. Sale of personal property—maps, books, other printed matter.
 32-3915. Conveyances—execution—contents.
 32-3916. Rendering irrigable lands unusable—unpaid construction costs.
 32-3917. Abandonment or vacation of federal-aid or state highways.
 32-3918. Highway crossing railroad, canal, or ditch.
 32-3920. Acquisition of property for controlled access facility.
 32-3923. Definitions.

- 32-3924. Advisory assistance.
- 32-3925. Compensation for moving expense as part of cost of construction—fixed payments in lieu of actual expense—dwelling—business or farm operation.
- 32-3926. Additional payment for realty with qualified dwelling—period of occupancy—amount—owner must subsequently purchase dwelling.
- 32-3927. Additional payment for realty with other dwelling—period of occupancy—amount.
- 32-3928. Review of application for assistance—director's decision final.
- 32-3929. Rules.
- 32-3930. Assistance payments not income for state tax purposes.
- 32-3931. No new element of condemnation damages created.

32-3901. Rights acquired by public in highway. By taking or accepting land for a highway, the public may acquire either a fee simple or any lesser estate or interest.

History: En. Sec. 8-101, Ch. 197, L. 1965.

Compiler's Note

Chapters 39 and 40 of this title were designated as Chapter 8 of the Highway

Code, entitled "Acquisition and Disposition of Property and Interests Therein." This chapter was designated as Part 1 of Chapter 8, entitled "Acquisition and Disposition by State."

32-3902. General power of department to acquire interests in property. Notwithstanding any other provision of law, the department of highways may acquire by purchase or other lawful manner lands or other real property, excluding oil, gas and mineral rights, which it considers reasonably necessary for present or future highway purposes. The department may acquire a fee simple or lesser estate or interest.

History: En. Sec. 8-102, Ch. 197, L. 1965; amd. Sec. 126, Ch. 316, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment of highways" and "department" for "commission"; and made minor changes in phraseology and punctuation.

32-3903. Purposes for which property acquired. The acquisition of lands or other property, or any interest therein, for present or future highway purposes includes, but is not limited to any of the following purposes: (1) For rights of way, including those necessary for highways within cities.

(2) For exchanging lands or other property or any interest therein for other such lands or interests for rights of way or other authorized purposes. The right of eminent domain shall not be exercised for this purpose.

(3) For deposits of road building materials, including rock, gravel, sand, and earth for reasonably foreseeable future road building purposes and uses. The right of eminent domain shall not be exercised to acquire any such deposits which constitute a component part of an existing private business enterprise.

(4) For offices, weighing stations, shops, storage yards, buildings, rest areas, informational sites, or communication facilities.

- (5) For parks adjoining or near any highway.
- (6) For the culture and support of trees or shrubs which benefit any highway by aiding in the maintenance and preservation of the roadbed.
- (7) For drainage in connection with any highway.
- (8) For the maintenance of an unobstructed view of any portion of a highway so as to promote the safety of the traveling public.
- (9) For the construction and maintenance of stock lanes or trails.
- (10) For the construction and maintenance or replacement of private or public drainage systems, or natural water or drainage courses made necessary by highway construction.
- (11) For providing land or other real property easements or rights of way for necessary relocation of existing utilities, utility easements, or other easements for facilities or purposes then in place or in effect upon a proposed right of way.

History: En. Sec. 8-103, Ch. 197, L. 1965.

DECISIONS UNDER FORMER LAW

Market Value of Condemned Land

Where highway commission condemned land for purposes of gaining an easement for the construction and maintenance of a state highway, and not for obtaining a deposit of gravel, sand, and other materials on the land, testimony as to the value of such materials was inadmissible as speculative, remote and conjectural and not within the purpose of former section 32-1615 (c). *State Highway Commission v. Mott*, 142 M 402, 384 P 2d 922.

Railroad Right of Way

Former section 32-1615 (k) permitted the state to condemn land in order to provide right of way for a railroad being moved to allow construction of public highways. *State ex rel. De Puy v. District Court*, 142 M 328, 384 P 2d 501.

Rental of Unused Right of Way

The 1961 amendment of former section

32-1615 so as to give express authority for the rental of unused right of way rendered moot a taxpayer's action to restrain the highway commission from granting an encroachment permit, where there was no indication that the permit, when granted, would violate the terms of the statutory amendment. *Wilson v. State Highway Commission*, 140 M 253, 370 P 2d 486, 488.

Transfer of Land

Any manner of transferring unused highway right of way which was inconsistent with former section 32-1615 was by implication excluded. *Wilson v. State Highway Commission*, 140 M 253, 370 P 2d 486, 488.

The state highway commission cannot give away or loan gratuitously the use of an unused highway right of way. *Wilson v. State Highway Commission*, 140 M 253, 370 P 2d 486, 488.

32-3904. Exercise of right of eminent domain—presumption. (1) Whenever the department cannot acquire lands or other property or interests in the lands or property at a price or cost which it considers reasonable, it may direct the attorney general or any county attorney to procure the interests by proceedings to be instituted as provided in sections 93-9901—93-9926 against all nonaccepting landholders.

(2) It shall not so direct the attorney general or any county attorney until it adopts an order declaring that:

- (a) Public interest and necessity require the construction or comple

tion by the state of the highway or improvement for one of the purposes set forth in section 32-3903.

(b) The interest described in the order and sought to be condemned is necessary for the highway or improvement.

(c) The highway or improvement is planned and located in a manner which will be compatible with the greatest public good and the least private injury.

(3) The order creates and establishes a disputable presumption:

(a) Of the public necessity of the proposed highway or improvement.

(b) That the taking of the interest sought is necessary therefor.

(c) That the proposed highway or improvement is planned or located in a manner which will be most compatible with the greatest public good and the least private injury.

History: En. Sec. 8-104, Ch. 197, L. 1965; amd. Sec. 127, Ch. 316, L. 1974.

Amendments

The 1974 amendment substituted "department" for "commission" in subsection (1); substituted "order" for "resolution" in subsection (2), subdivision (2)(b) and subsection (3); and made minor changes in phraseology.

Burden of Proof

In order to attack the presumption raised by a resolution of public interest

and necessity for condemnation of a strip of land without providing for a livestock underpass, landowner must introduce evidence as to the amount of his damages if the land is taken without building an underpass. *State Highway Commission v. Parini*, 159 M 248, 496 P 2d 1140.

Disputable presumption, established by highway department resolution of public interest and necessity, was not overcome by evidence that a possible alternative route might have been selected. *State, Department of Highways v. Higgins*, — M —, 530 P 2d 776.

DECISIONS UNDER FORMER LAW

Burden of Proof

Where commission condemned defendant's land to build bypass through it rather than reconstruct highway through town, it became incumbent upon the defendant to show fraud, abuse of discretion or arbitrary action in order to defeat the commission's action, whereas the commission had only to establish that the taking of the property was reasonably necessary for rebuilding the highway. *State Highway Commission v. Crossen-Nissen Co.*, 145 M 251, 400 P 2d 283, distinguished in 155 M 39, 47, 466 P 2d 594.

Judicial Interference

It is not within the province of the judicial branch of government to interfere with the exercise of eminent domain in the absence of clear and convincing evidence of arbitrariness or abuse of discretion by commission. *State Highway Commission v. Crossen-Nissen Co.*, 145 M 251, 400 P 2d 283, distinguished in 155 M 39, 47, 466 P 2d 594.

Power To Condemn

The power of eminent domain is vested exclusively in the legislature, and can be exercised only by the legislature and those agencies to whom it has delegated the power. *State Highway Commission v. Crossen-Nissen Co.*, 145 M 251, 400 P 2d 283.

Selection of Route

Highway commission did not abuse its discretion in taking farm land by eminent domain even though it was shown that town through which old highway had passed would be financially harmed and bypass would cost more to build, since the resulting savings in travel costs to highway users, in addition to the compensation paid the petitioners, offset disadvantages claimed by them. *State Highway Commission v. Crossen-Nissen Co.*, 145 M 251, 400 P 2d 283, distinguished in 155 M 39, 47, 466 P 2d 594.

32-3905. Acquisition of whole parcel—sale of excess. (1) Whenever any interest in a part of a parcel of land or other real property is to be acquired for highway purposes, leaving the remainder in a shape or

condition as to be of little market value, or to give rise to claims or litigation over severance or other damage, the department may acquire the whole parcel. It may sell or exchange the remainder for other property needed for highway purposes.

(2) Whenever a part of a parcel of land acquired for highway purposes is in a shape or size as to come within section 11-614, the department shall prepare and file the required plat in the office of the county clerk and recorder.

History: En. Sec. 8-105, Ch. 197, L. 1965; amd. Sec. 128, Ch. 316, L. 1974.

Amendments

The 1974 amendment substituted "department" for "commission" in two places; and made minor changes in phraseology. way Commission v. Chapman, 152 M 79,

Amount of Property Which May Be Taken

Trial court did not exceed powers under statute when it limited amount of property sought to be appropriated by state to that portion of property actually needed for proposed highway improvement be-

cause question whether public interest required taking of entire parcel was question of fact to be determined by court; preliminary order of court limiting amount of appropriation to that actually required for construction of city street improvements was supported by evidence that excess land retained some value as separate parcel notwithstanding commission's argument that remaining land was financial remnant of such value as to be of little market value and give rise to claims over severance and other damages. State Highway Commission v. Chapman, 152 M 79, 446 P 2d 709.

32-3906. Power to acquire for future. (1) The power conferred by chapters 39 and 40 of this title to acquire interests in lands or other real property includes power to acquire for reasonably foreseeable future needs.

(2) The department may lease unused portions of lands or other real property which are held for highway purposes and interstate highway rights of way which are not presently needed for highway purposes on the terms and conditions which it decides. The department may repair, maintain, and care for the property in order to secure rent from it.

(3) All rent received shall be deposited to the credit of the department.

History: En. Sec. 8-106, Ch. 197, L. 1965; amd. Sec. 129, Ch. 316, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "commission" throughout the section; and made minor changes in phraseology.

32-3907. Road building materials. (1) A right of way or easement acquired by the department for construction, operation, repair, reconstruction, or maintenance of highways includes, among others, the right to use, remove, relocate, redistribute, or otherwise dispose of gravel and other road-building materials found or located within the boundaries of the right of way or easement.

(2) For the purposes of chapters 39 and 40 of this title, the gravel or materials is considered to be real property and not minerals.

History: En. Sec. 8-107, Ch. 197, L. 1965; amd. Sec. 130, Ch. 316, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "commission" in subsection (1); and made minor changes in phraseology.

32-3908. No compensation in certain cases—exceptions. (1) Whenever the department files a description and plan as provided in section 32-2413, no consideration, allowance or assessment of values or compensation shall be made in the purchase or condemnation of buildings or improvements or subdivisions placed or erected on the land covered by the plan after the filing.

(2) The establishment of the highway location covered by the description and plan shall be ineffective one year after filing if no action to condemn or acquire the property has been commenced.

(3) Nothing in this section or in section 32-2413 applies to crops or similar improvements planted on the lands described. They are governed by section 93-9913.

History: En. Sec. 8-108, Ch. 197, L. 1965; amd. Sec. 131, Ch. 316, L. 1974. department" for "commission" in subsection (1); and made minor changes in phraseology.

Amendments

The 1974 amendment substituted "de-

32-3909. Exchange of interests in real property. (1) The department may determine that an interest in real property, however acquired by it, is no longer necessary to the laying out, altering, construction, improvement, or maintenance of a highway. It may then exchange the interest, either as entire or partial consideration, for any other interest in real property needed for highway purposes. The department may establish the manner and terms and conditions for the exchange.

(2) The owner from whom the interest was originally acquired by the state, or his successor in interest, has the right to require the department to offer the land for sale in the manner set forth in sections 32-3910 and 32-3911. The department shall notify the owner or successor in interest of its intention to exchange the interest. The owner shall make his demand for sale by registered mail to the department within ten (10) days after receipt of notice from the department.

History: En. Sec. 8-109, Ch. 197, L. 1965; amd. Sec. 132, Ch. 316, L. 1974. department" for "commission" throughout the section; and made minor changes in phraseology.

Amendments

The 1974 amendment substituted "de-

32-3910. Sale of interests in real property. The department may sell an interest in real property, however acquired by it, which it determines is not necessary to the laying out, altering, construction, improvement, or maintenance of a highway. If the interest is reasonably of a value in excess of one hundred dollars (\$100), sale shall be made to the highest bidder at public auction or by sealed bids as the department decides. The sale shall be conducted as provided in section 32-3911.

History: En. Sec. 8-110, Ch. 197, L. 1965; amd. Sec. 133, Ch. 316, L. 1974.

Amendments

The 1974 amendment substituted "department" for "commission" in two places; and made minor changes in phraseology.

Easement

Easement granting state right to use property adjoining highway as public park was not such an "interest in real property" as to require public sale of park area upon abandonment of highway and park area; quitclaim deed recon-

veying state's interest to fee holder was valid. Park County Rod and Gun Club v. Department of Highways, — M —, 517 P 2d 352.

32-3911. Conduct of sale. (1) The department shall publish notice of the sale in a newspaper published in the county in which the interest is located once a week for two (2) successive weeks. Sale shall be held in the county wherein the property is located unless the department finds it impractical in which case the sale will be held at the office of the department at the capitol.

(2) Before the sale of an interest having a value in excess of one hundred dollars (\$100), the department shall have it appraised at a price representing a fair market value. The appraised value shall be stated in the published notice.

(3) A sale may not be made of an interest unless it has been appraised within three (3) months prior to the date of the sale. A sale may not be made for less than ninety per cent (90%) of the appraised value.

(4) Title to an interest may not pass from the state until the purchaser has paid the full amount of the purchase price into the state treasury to the credit of the department.

History: En. Sec. 8-111, Ch. 197, L. 1965; amd. Sec. 1, Ch. 21, L. 1974; amd. Sec. 134, Ch. 316, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 21 and once by Ch. 218. Neither amendatory act mentioned or entirely incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 21, Laws of 1974, substituted the last sentence of subsection (1) for a sentence reading: "Sale shall be held at the office of the commission at the capitol."

Chapter 316, Laws of 1974, substituted references to "department" in subsections (1), (2), and (4) for references to "commission" and made minor changes in phraseology.

32-3912. Option of original owner or successor in interest to purchase at sale price. The owner from whom the interest was originally acquired, or his successor in interest, shall have the option to purchase the interest by offering therefor an amount of money equal to the highest bid received for the interest at the sale. The offer shall be sent to the department by registered mail within ten (10) days from the date of the sale.

History: En. Sec. 8-112, Ch. 197, L. 1965; amd. Sec. 135, Ch. 316, L. 1974.

Amendments

The 1974 amendment substituted "department" for "commission."

32-3913. Private sale if no bid or offer. (1) If, after proper notice is published, the department receives neither bid at public sale nor offer from the original owner of his successor in interest, it may at any time thereafter sell the interest at private sale. At the sale, the department may accept as the purchase price an amount of money not less than ninety per cent (90%) of the appraised value.

(2) Title to an interest may not pass from the state until the purchaser has paid the full amount of the purchase price into the state treasury to the credit of the department.

History: En. Sec. 8-113, Ch. 197, L. 1965; amd. Sec. 136, Ch. 316, L. 1974.

partment" for "commission" throughout the section; and made minor changes in phraseology.

Amendments

The 1974 amendment substituted "de-

32-3914. Sale of personal property—maps, books, other printed matter.

(1) The department may sell at public or private sale, as it determines, an interest in personal property, however acquired by it, which it determines is not necessary to the laying out, altering, construction, improvement, or maintenance of a highway.

(2) The department may sell at public or private sale, as it determines, maps, books, pamphlets, or other printed matter, prepared or acquired by the department. The department may sell copies of highway records to the public and may set reasonable prices for them.

(3) The proceeds from sales made under this section shall be paid into the state treasury to the credit of the department.

History: En. Sec. 8-114, Ch. 197, L. 1965; amd. Sec. 137, Ch. 316, L. 1974.

partment" for "commission" in two places; and made a minor change in phraseology.

Amendments

The 1974 amendment substituted "de-

32-3915. Conveyances—execution—contents. (1) Land or an interest in land sold by the department shall be conveyed only when full payment has been made for it. It shall be conveyed by a deed or patent of conveyance without covenants which recites that it was issued under this chapter.

(2) The deed or patent shall contain a reservation of easements for rights of way for the benefit of the United States, and all other reservations to which the land conveyed may be subject.

(3) The deed or patent shall be signed by the governor, or, in case of his absence or inability, the lieutenant governor. It shall be attested by the secretary of state and have attached the great seal of the state. It need not be acknowledged.

History: En. Sec. 8-115, Ch. 197, L. 1965; amd. Sec. 138, Ch. 316, L. 1974.

partment" for "commission" in subsection (1); and made minor changes in phraseology.

Amendments

The 1974 amendment substituted "de-

32-3916. Rendering irrigable lands unusable—unpaid construction costs. (1) Whenever the department acquires irrigable land for highway purposes, or acquires land as to render other irrigable land unusable for irrigation, it shall pay to the owner of the irrigation or drainage project, in addition to other sums allowed by law, a proportionate share of the unpaid construction costs of the project or drainage district.

(2) The department shall also pay a lump-sum amount to the district sufficient to produce on an amortized basis for a reasonable period not to exceed ninety (90) years, a sum of money equal to the annual increase in operation and maintenance costs against the remaining lands under irrigation in the district resulting from the severance from the district of the lands acquired by the department and not overcome by bringing in new or additional land under irrigation. For the purpose of determining the amount of the lump-sum payment, the annual operation and maintenance assessment of the district shall be considered to be the average for the five (5) years, or so many years as the district has assessment experience, if less than five (5) years, preceding the date of acquisition.

History: En. Sec. 8-115, Ch. 197, L. 1965; amd. Sec. 1, Ch. 299, L. 1969; amd. Sec. 139, Ch. 316, L. 1974.

Amendments

The 1969 amendment added the second paragraph.

The 1974 amendment substituted "department" for "commission" throughout the section; and made minor changes in phraseology and style.

Effective Date

Section 2 of Ch. 299, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 11, 1969.

Cost of Future Operation and Maintenance

State highway commission is not obligated to pay irrigation district for future cost of operation and maintenance attributable to lands taken within irrigation district for highway purposes since lands taken will not continue to benefit from services of irrigation district, notwithstanding fact that takings have reduced total irrigable acreage of district and thereby increased per acre cost of operation and maintenance of district. *Helena Valley Irrig. Dist. v. State Highway Commission*, 150 M 192, 433 P 2d 791.

32-3917. Abandonment or vacation of federal-aid or state highways. Every federal-aid or state highway once established must continue until abandoned or vacated by operation of law, or by judgment of a court of competent jurisdiction, or by a proper order of the commission.

History: En. Sec. 8-117, Ch. 197, L. 1965.

32-3918. Highway crossing railroad, canal, or ditch. (1) Whenever any federal-aid or state highway is laid out on public lands across any railroad, canal, or ditch, the owners or users thereof must, at their expense, so prepare the railroad, canal, or ditch that the highway may cross it without damage or delay.

(2) When the right to cross is obtained through the judgment of any court, no damages shall be awarded.

History: En. Sec. 8-118, Ch. 197, L. 1965.

32-3919. Repealed.

Repeal

Section 32-3919 (Sec. 8-119, Ch. 197, L. 1965), relating to rights of way for

toll bridges, was repealed by Sec. 209, Ch. 316, Laws of 1974.

32-3920. Acquisition of property for controlled access facility. (1) The highway authorities of the state, counties, incorporated cities and

towns, respectively, or in co-operation one with the other, may acquire private or public property and property rights for controlled access highways or controlled access facilities and service roads. Such rights may include rights of access, air, view, and light. They may be acquired by gift, devise, purchase, or condemnation, in the same manner as may now or hereafter be authorized by law for the acquisition of property or property rights in connection with highways, roads, and streets in their respective jurisdictions.

(2) A right of way is hereby given, dedicated, and set apart for controlled access highways or controlled access facilities through, over, upon, or across any county road and any street or alley intersecting a controlled access highway. Acquisition of any county road, street, or alley for use as a controlled access highway or controlled access facility shall be deemed a superior and more necessary public use and purpose than the public use or purpose to which such road, street, or alley has theretofore been dedicated.

History: En. Sec. 8-120, Ch. 197, L. 1965.

DECISIONS UNDER FORMER LAW

Judicial Determination of Necessity

In adopting former section 32-2006 (controlled access highway law) the legislature is presumed to have considered sections 93-9905 and 93-9911, R. C. M.

1947, and the power to determine the public necessity of a proposed highway or facility remains with the trial judge. *State Highway Commission v. Yost Farm Co.*, 142 M 239, 384 P 2d 277.

32-3921, 32-3922. Repealed.

Repeal

Sections 32-3921 and 32-3922 (Secs. 1, 2, Ch. 212, L. 1969; Sec. 1, Ch. 426, L. 1971), relating to authorization for pay-

ment of moving expenses of persons affected by real property acquisitions, were repealed by Sec. 209, Ch. 316, Laws of 1974.

32-3923. Definitions. In sections 32-3923 through 32-3931:

(a) "Displaced person" means any individual, family, business or farm operation which moves from real property acquired for state highway purposes or for a federal-aid highway.

(b) "Individual" means a person who is not a member of a family.

(c) "Family" means two (2) or more persons living together in the same dwelling unit who are related to each other by blood, marriage, adoption or legal guardianship.

(d) "Business" means any lawful activity conducted primarily for the purchase and resale, manufacture, processing or marketing of products, commodities, or other personal property; or for the sale of services to the public; or by a nonprofit corporation.

(e) "Farm operation" means any activity conducted primarily for the production of one (1) or more agricultural products or commodities for sale and home use, and customarily producing the products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

History: En. Sec. 3, Ch. 212, L. 1969;
amd. Sec. 140, Ch. 316, L. 1974.

sections 32-3923 through 32-3931" in the introductory sentence for "As used in this act"; and made minor changes in phraseology.

Amendments

The 1974 amendment substituted "In

32-3924. Advisory assistance. (a) The department of highways may give relocation advisory assistance to an individual, family, business or farm operation displaced because of the acquisition of real property for a project on the state highway systems.

(b) In giving assistance, the department may establish a temporary local relocation advisory assistance office to assist in obtaining replacement facilities for individuals, families and businesses which must relocate because of the acquisition of right of way for a project on the state highway systems.

History: En. Sec. 4, Ch. 212, L. 1969;
amd. Sec. 141, Ch. 316, L. 1974.

partment of highways" and "department" for "commission"; and made minor changes in phraseology.

Amendments

The 1974 amendment substituted "de-

32-3925. Compensation for moving expense as part of cost of construction—fixed payments in lieu of actual expense—dwelling—business or farm operation. (a) As a part of the cost of construction the department may compensate a displaced person for his actual and reasonable expense in moving himself, family, business or farm operation, including moving personal property, and for his actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, not to exceed an amount equal to the reasonable expenses that would have been required to relocate the property, as determined by the department, and actual reasonable expenses in searching for a replacement business or farm.

(b) A displaced person who moves from a dwelling may elect to receive, instead of the payments authorized by subsection (a), a moving expense allowance, determined according to a schedule established by the department, not to exceed three hundred dollars (\$300), and in addition a dislocation allowance of two hundred dollars (\$200).

(c) A displaced person who moves or discontinues his business or farm operation may elect to receive instead of the payment authorized by subsection (a), a fixed relocation payment in an amount equal to the average annual net earnings of the business or farm operation, except that the payment may not be less than two thousand five hundred dollars (\$2,500) nor more than ten thousand dollars (\$10,000). In the case of a business, a payment may not be made under this subsection unless the department is satisfied that the business cannot be relocated without a substantial loss of patronage, and is not a part of a commercial enterprise having at least one (1) other establishment, not being acquired, which is engaged in the same or similar business. For purposes of this subsection, the term "average annual net earnings" means one-half ($\frac{1}{2}$) of any net earnings of the business or farm operation, before federal and state income taxes, during the two (2) taxable years immediately

preceding the taxable year in which the business or farm operation moves from the real property acquired for the project or during such other period which the department determines to be more equitable for establishing the earnings, and includes any compensation paid by the business or farm operation to the owner, his spouse or his dependents during this two (2) year period. To be eligible for the payment authorized by this subsection, the business or farm operation must make its state income tax returns available and its financial statements and accounting records available for audit and confidential use to determine the payment authorized by this subsection.

History: En. Sec. 5, Ch. 212, L. 1969; amd. Sec. 2, Ch. 426, L. 1971; amd. Sec. 142, Ch. 316, L. 1974.

Amendments

The 1971 amendment added the language commencing with "actual direct losses" and continuing to the end of subdivision (a); increased the limits for moving expense allowance and dislocation allowance from \$200 to \$300, and from \$100 to \$200 respectively in subdivision (b); inserted the provision for a minimum payment of \$2,500 in the first sentence of

subdivision (c); increased the maximum payment under the first sentence of subdivision (c) from \$5,000 to \$10,000; and inserted "or during such other period as the commission determines to be more equitable for establishing such earnings" in the latter part of the third sentence of subdivision (c).

The 1974 amendment substituted "department" for "commission" throughout the section; substituted "department" for "state" near the end of subsection (a); and made minor changes in phraseology and punctuation.

32-3926. Additional payment for realty with qualified dwelling—period of occupancy — amount — owner must subsequently purchase dwelling. (1) In addition to the payments authorized by section 32-3925 as a part of the cost of construction, the department may make the following payments to the owner of real property acquired for a project on the state highway systems which is improved with a single, two (2) or three (3) family dwelling, actually owned and occupied by the owner for not less than one hundred eighty (180) days prior to the initiation of negotiations for the acquisition of the property:

(a) A payment not to exceed fifteen thousand dollars (\$15,000) which, when added to the acquisition payment, equals the reasonable price required for a comparable dwelling determined, in accordance with standards established by the department, to be a decent, safe, and sanitary dwelling adequate to accommodate the displaced owner, reasonably accessible to public services and place of employment and available on the market;

(b) A payment, if any, which will compensate the displaced person for increased costs which the person is required to pay for financing the acquisition of a comparable replacement dwelling. This payment shall be made only if the dwelling acquired by the department was encumbered by a bona fide mortgage which was a valid lien on the dwelling for not less than one hundred eighty (180) days prior to the initiation of negotiations for the acquisition of the dwelling. This payment shall be equal to the excess in the aggregate interest and other debt service cost of that amount of the principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the mortgage on the acquired dwelling under the remainder term of the mortgage on the acquired dwelling reduced to discounted present value. The discount rate shall be

the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located;

(c) The payment of reasonable expenses incurred by the displaced person for evidence of title, recording fees, and other closing costs incidental to the purchase of replacement dwelling but not including pre-paid expenses.

(2) Payments shall be made only to a displaced owner who purchases and occupies a dwelling, that meets standards established by the department, within one (1) year subsequent to the date on which he is required to move from the dwelling acquired for the project.

History: En. Sec. 6, Ch. 212, L. 1969; amd. Sec. 3, Ch. 426, L. 1971; amd. Sec. 143, Ch. 316, L. 1974.

Amendments

The 1971 amendment substituted "one hundred eighty (180) days prior to the initiation of negotiations for the acquisition of the property" for "one (1) year prior to the first written offer for the acquisition of such property" in subsection (1); increased the maximum payment under subdivision (1)(a) from \$5,000 to

\$15,000; substituted "reasonable price" for "average price" in subdivision (1)(a); inserted subdivisions (1)(b) and (1)(c); and made minor changes in phraseology and style.

The 1974 amendment substituted "department" for "commission" in subsection (1), subdivision (1)(a) and subsection (2); substituted "department" for "state" in subdivision (1)(b); and made minor changes in phraseology, punctuation and style.

32-3927. Additional payment for realty with other dwelling—period of occupancy—amount. (a) In addition to the payment authorized by section 32-3925, as a part of the cost of construction, the department may make a payment to an individual or family displaced from a dwelling not eligible to receive a payment under section 32-3926, which dwelling was actually and lawfully occupied by the individual or family for not less than ninety (90) days prior to the first written offer for the acquisition of the property.

(b) The payment, not to exceed four thousand dollars (\$4,000), shall be the additional amount which is necessary to enable the individual or family to lease or rent for a period not to exceed four (4) years, or to make the down payment on the purchase of a decent, safe and sanitary dwelling of standards adequate to accommodate the individual or family in areas not generally less desirable in regard to public utilities and public and commercial facilities, except that if the amount of the down payment to purchase exceeds two thousand dollars (\$2,000), the individual or family must equally match the amount in excess of two thousand dollars (\$2,000) in making the down payment.

History: En. Sec. 7, Ch. 212, L. 1969; amd. Sec. 4, Ch. 426, L. 1971; amd. Sec. 144, Ch. 316, L. 1974.

Amendments

The 1971 amendment increased the maximum payment under subsection (b) from \$1,500 to \$4,000; increased the rental

period specified in subsection (b) from two to four years; added the exception to subsection (b); and made minor changes in style.

The 1974 amendment substituted "department" for "commission" in subsection (1); and made minor changes in phraseology.

32-3928. Review of application for assistance—director's decision final. A displaced person aggrieved by a determination as to eligibility for a payment authorized by 32-3925 through 32-3927 or the amount of a pay-

ment may have his application reviewed by the director of highways, whose decision shall be final.

History: En. Sec. 8, Ch. 212, L. 1969; amd. Sec. 145, Ch. 316, L. 1974; amd. Sec. 1, Ch. 143, L. 1977.

Amendments

The 1974 amendment substituted "sections 32-3925 through 32-3927" for "this

act"; substituted "commission" for "highway commission"; and made a minor change in phraseology.

The 1977 amendment substituted "director of highways" for "commission" near the end of the section; and made minor changes in punctuation and style.

32-3929. Rules. The department may adopt rules to implement sections 32-3923 through 32-3931, including rules to implement the payment of expenses authorized by sections 32-3925 through 32-3927, and other rules relating to highway relocation assistance which are necessary or desirable under federal laws and rules. The department's rules shall include provisions relating to:

(a) A moving expense allowance, as provided in subsection (b) of section 32-3925, for a displaced person who moves from a dwelling, determined according to a schedule, not to exceed three hundred dollars (\$300);

(b) The conditions for decent, safe, and sanitary dwellings;

(c) Procedure for an aggrieved displaced person to have his determination of eligibility or amount of payment reviewed by the commission; and

(d) Eligibility of displaced persons for relocation assistance payments, the procedure for those persons to claim the payments, and the amounts of the payments.

History: En. Sec. 9, Ch. 212, L. 1969; amd. Sec. 5, Ch. 426, L. 1971; amd. Sec. 146, Ch. 316, L. 1974.

Amendments

The 1971 amendment increased the limit on moving expense allowance under subdivision (a) from \$200 to \$300; substituted "conditions" for "standards" in subdivision (b); and made a minor change in style.

The 1974 amendment substituted "The department may adopt * * * through 32-

3927" at the beginning of the section for "The commission is authorized to adopt rules and regulations to implement this act"; substituted "The department's rules" in the second sentence for "Such rules"; and made minor changes in phraseology and style.

Effective Date

Section 6 of Ch. 426, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 18, 1971.

32-3930. Assistance payments not income for state tax purposes. A payment received by a displaced person under sections 32-3923 through 32-3929 may not be considered as income for Montana state income tax purposes.

History: En. Sec. 10, Ch. 212, L. 1969; amd. Sec. 147, Ch. 316, L. 1974.

Amendments

The 1974 amendment substituted "under

sections 32-3923 through 32-3929" for "under this article"; and made a minor change in phraseology.

32-3931. No new element of condemnation damages created. Nothing in sections 32-3923 through 32-3931 creates in a condemnation proceeding brought under the power of eminent domain an element of damages not in existence on July 1, 1969.

History: En. Sec. 11, Ch. 212, L. 1969; amd. Sec. 148, Ch. 316, L. 1974.

Amendments

The 1974 amendment substituted "in

sections 32-3923 through 32-3931" for "in this act" at the beginning of the section; substituted "on July 1, 1969" for "on the date of enactment of this act" at the end of the section; and made minor changes in phraseology.

CHAPTER 40—ACQUISITION AND DISPOSITION OF PROPERTY BY COUNTY

- Section 32-4001. Rights of way for county roads.
 32-4002. Petition by freeholders to establish, change, abandon, or discontinue a county road.
 32-4003. Contents of petition.
 32-4004. Investigation of petition—notice.
 32-4005. Opening of road—survey.
 32-4006. Determination of damages—declaration as road.
 32-4007. Award of damages deemed rejected—proceedings to secure right of way.
 32-4008. Damages and expenses to be paid out of county road fund.
 32-4009. Change of road upon petition.
 32-4010. Notice to district supervisor of opening of county road.
 32-4011. Record of opening or changing road.
 32-4012. Deeds and judgments for right of way—recording.
 32-4013. County road crossing railroad, canal or ditch.
 32-4014. Abandonment or vacation of county roads.
 32-4015. Stock lanes.
 32-4016. Board to transfer responsibility for right of way.
 32-4017. Acquisition of property for public ferries and wharves.
 32-4018. Acquisition of property for controlled access facility.

32-4001. Rights of way for county roads. (1) Each board shall acquire rights of way for county roads and discontinue or abandon them only upon proper petition therefor.

(2) By taking or accepting interests in real property for county roads, the public acquires only the right of way and the incidents necessary to enjoying and maintaining it.

History: En. Sec. 8-201, Ch. 197, L. 1965.

Compiler's Note

This chapter was designated as Part 2 of Chapter 8 of the Highway Code, entitled "Acquisition and Disposition by County."

Sewer Easement

County possesses sufficient interest in right of way for county road created by common-law dedication, to grant permission, without adjoining property owners' consent, for installation of municipal sewer under the road even if adjoining property owners are not allowed to connect with the sewer line. *Bolinger v. City of Bozeman*, 158 M 507, 493 P 2d 1062.

32-4002. Petition by freeholders to establish, change, abandon, or discontinue a county road. Any ten, or a majority, of the freeholders of a road district, taxable therein for road purposes, may petition the board in writing to open, establish, construct, change, abandon, or discontinue any county road in the district. If the county is not divided into districts the entire county shall be one road district. When the road petitioned for is on the dividing line between two counties, the same procedure must be followed, except that a copy of the petition must be presented to each board. The two boards shall act jointly.

History: En. Sec. 8-202, Ch. 197, L. 1965.

32-4003. Contents of petition. The petition must set forth: (1) The particular road or roads to be opened, established, constructed, changed, discontinued, or abandoned.

(2) The general route thereof.

(3) The lands and owners affected.

(4) Whether the owners who can be found consent thereto.

(5) Where consent is not given, the probable cost of the right of way.

(6) The necessity for, and advantage of, the petitioned action.

History: En. Sec. 8-203, Ch. 197, L.
1965.

32-4004. Investigation of petition—notice. (1) At its next regular or special meeting, or in any case, at a date within thirty (30) days after filing of any petition, the board shall cause an investigation to be made of the feasibility, desirability, and cost of granting the prayer of the petition. The investigation shall be sufficient to properly determine the merits or demerits of the petition.

(2) No more than one member of the board and the county surveyor shall make the investigation. After considering the petition and the results of the investigation, the board shall make an entry of its decision on the minutes.

(3) Within ten (10) days thereafter, the board shall cause notice of its decision to be sent by certified mail to all owners of land abutting on the road petitioned for. The owners shall be those listed on the last county assessment roll.

History: En. Sec. 8-204, Ch. 197, L.
1965.

32-4005. Opening of road—survey. If the petition is for the opening of a county road, and the board grants the prayer, ordering the road opened, it shall proceed at once to have it opened to the public and declare it to be a county road. The board may order the county surveyor, or some other competent surveyor, if the county surveyor is incompetent to survey and plat the road. He shall file his fieldnotes with the county clerk and recorder. The surveyor shall receive seven dollars (\$7) per day and actual traveling expenses.

History: En. Sec. 8-205, Ch. 197, L.
1965.

32-4006. Determination of damages—declaration as road. (1) Whenever the board makes an order establishing or changing any road, it must find the amount of damages sustained by each owner or claimant of lands or improvements thereon affected by the road. Damages shall be paid to the owner or claimant, if known, upon his showing or establishing his right or title to the lands or improvements and furnishing proper deeds and releases.

(2) Damages must be determined by estimating the benefits and damages accruing. The sum estimated as benefits must be deducted

from the sum estimated as damages, and the remainder, if any, shall be the amount of damages awarded.

(3) If all awards are accepted, the board shall declare the road a county road and open it.

History: En. Sec. 8-206, Ch. 197, L. 1965.

32-4007. Award of damages deemed rejected—proceedings to secure right of way. (1) If any award of damages provided for in section 8-206 [32-4006] is not accepted within twenty (20) days after the date of the award, it shall be deemed rejected by the owner. The board shall, by order, direct that proceedings to procure the right of way be instituted under sections 93-9901—93-9926 by the county attorney against all nonaccepting landowners.

(2) Such proceedings shall in no way be affected or invalidated by the failure of the board to give any notice or do any act provided for in this part [chapter]. Failure to give any such notice shall not be considered by any court as a defense in any proceedings for procuring right of way.

(3) However, in such proceedings it shall be made to appear that the board shall have declared by resolution that the right of way was necessary and desirable.

History: En. Sec. 8-207, Ch. 197, L. 1965.

32-4008. Damages and expenses to be paid out of county road fund. All awards of damages estimated by the board or made by the proper court and all expenses, including those of the members of the board and their per diem authorized by section 16-912, shall be paid out of the county road fund on the order of the board.

History: En. Sec. 8-208, Ch. 197, L. 1965.

32-4009. Change of road upon petition. (1) A majority of the freeholders or owners residing on any county road, or portion thereof, may petition the board in writing to so change the road or portion as to run on subdivision or section lines.

(2) The board shall investigate in the same manner as provided in section 8-204 [32-4004]. After investigation, the board may order the making of the change if it can be done without material damage, injury, or serious inconvenience to the public customarily using the road or portion.

(3) Those petitioning for the change shall bear all or such portion of the cost and expense of making it as the board may order.

History: En. Sec. 8-209, Ch. 197, L. 1965.

32-4010. Notice to district supervisor of opening of county road. When a county road is to be opened, established, constructed, changed,

abandoned, or discontinued, the county clerk shall notify the supervisor of the proper district and furnish him with a certified copy of the order of the board.

History: En. Sec. 8-210, Ch. 197, L.
1965.

32-4011. Record of opening or changing road. When a county road is opened or changed, the findings of the board, the plat fieldnotes, and the report of the surveyor shall be recorded in the office of the county clerk in a book kept for that purpose.

History: En. Sec. 8-211, Ch. 197, L.
1965.

32-4012. Deeds and judgments for right of way—recording. (1) When a right of way is voluntarily given or purchased, an instrument in writing, conveying the right of way and incidents thereto, must be signed and acknowledged by the person making it. It must then be recorded in the office of the clerk of the county where the land is located.

(2) When a right of way is condemned, a certified copy of the judgment of the court must be made. It must then be filed in the office of the clerk of the county where the land is located.

(3) Both types of instruments shall particularly describe the land.

History: En. Sec. 8-212, Ch. 197, L.
1965.

32-4013. County road crossing railroad, canal or ditch. (1) Whenever any county road is laid out on public lands across any railroad, canal, or ditch, the owners or users thereof must at their expense, so prepare the railroad, canal, or ditch that the road may cross it without damage or delay.

(2) When the right to cross is obtained through the judgment of any court, no damages shall be awarded.

History: En. Sec. 8-213, Ch. 197, L.
1965.

32-4014. Abandonment or vacation of county roads. All county roads once established must continue to be county roads until abandoned or vacated by operation of law, or by judgment of a court of competent jurisdiction, or by the order of the board. No order to abandon any county road shall be valid unless preceded by notice and public hearing.

History: En. Sec. 8-214, Ch. 197, L.
1965.

32-4015. Stock lanes. [1] Upon presentation of a proper petition, each board may establish, alter, or vacate stock lanes when it deems it expedient and necessary for the convenience of the public and for the convenience of travel on roads now established. Any lane may adjoin and parallel a county road and shall be described in the petition for creation and in the order of the board creating it.

(2) A stock lane is a county road established and maintained for the driving and travel of livestock. It shall be not less than sixty (60) feet wide. The width shall be determined by the board in the order creating it.

(3) The provisions of sections 8-201—8-214 of this part [32-4001 to 32-4014 of this chapter] and the general laws relating to establishing, altering, and vacating county roads including the exercise of the right of eminent domain shall apply to stock lanes. References in all petitions, orders, and proceedings shall be to "stock lanes" in order to differentiate them from other highways.

History: En. Sec. 8-215, Ch. 197, L. 1965.

Compiler's Note

The compiler has inserted the bracketed designation for subsection (1).

32-4016. Board to transfer responsibility for right of way. A board shall transfer its control over, and responsibility for, a county road when the department of highways notifies it that:

(1) A federal or state highway has been established and definitely located over a county road.

(2) Funds are available for immediate construction of the highway.

(3) The highway will be improved and maintained by the department.

History: En. Sec. 8-216, Ch. 197, L. 1965; amd. Sec. 149, Ch. 316, L. 1974.

partment of highways" for "commission" in the first sentence; substituted "department" for "commission" in subdivision (3); and made minor changes in phraseology.

Amendments

The 1974 amendment substituted "de-

32-4017. Acquisition of property for public ferries and wharves. (1) Upon the proper showing, as provided in section 16-1116, each board may construct or acquire ferries by condemnation or purchase. Each board may also acquire all the necessary boats, grounds, roads, approaches, landings, and improvements pertaining to the ferry.

(2) Each board may acquire real property for these purposes under the provisions of sections 93-9901—93-9926.

(3) No board shall establish or maintain a county ferry or wharf with a landing-place in any incorporated city or town which, by its charter, is vested with the power to build and regulate ferries, wharves, or landings at the feet of streets terminating at a river or harbor.

History: En. Sec. 8-217, Ch. 197, L. 1965.

32-4018. Acquisition of property for controlled access facility. The highway authorities of the state, counties, incorporated cities, and towns, respectively or in co-operation each with the other, may acquire private or public property and property rights for controlled access highways or controlled access facilities and service roads. Such rights may include rights of access, air, view, and light. They may be acquired by gift, devise, purchase, or condemnation, in the same manner as may

now or hereafter be authorized by law for the acquisition of property or property rights in connection with highways, roads, and streets in their respective jurisdictions.

History: En. Sec. 8-218, Ch. 197, L. 1965.

CHAPTER 41—CONTRACTS OF STATE HIGHWAY COMMISSION

- Section 32-4101. Letting of contracts on state and federal-aid highways.
 32-4102. Competitive bidding.
 32-4103. Bidder's security—contractor's bond.

32-4101. Letting of contracts on state and federal-aid highways. All contracts for work on state and federal-aid highways, including portions in cities and towns, and all contracts entered into under section 11-1023 shall be let by the commission. Except as otherwise specifically provided, the commission may enter such types of contracts and upon such terms as it may decide. All contracts shall meet the requirements of sections 41-701—41-703. When there is no prevailing rate of wages set by collective bargaining, the commission shall determine the prevailing rate to be stated in the contract.

History: En. Sec. 9-101, Ch. 197, L. 1965.

designated as Chapter 9 of the Highway Code, entitled "Contracts." This chapter was designated as Part 1 of Chapter 9, entitled "Contracts of Commission."

Compiler's Note

Chapters 41 and 42 of this title were

32-4102. Competitive bidding. (1) When the estimated cost of any work exceeds one thousand dollars (\$1,000), the commission shall let the contract by competitive bidding. Award shall be made upon such notice and upon such terms as the commission may prescribe by its rules and regulations. However, except when prohibited by federal law, the commission must make awards and contracts in accordance with the provisions of sections 82-1924 and 82-1926.

(2) If the commission finds that the work may be done in some more efficient manner, it need not let the contract by competitive bidding.

(3) If, on highway construction work financed in whole or in part by federal funds, the United States secretary of transportation affirmatively finds that under the circumstances relating to a particular project some method other than competitive bidding is in the public interest, the commission may enter into contracts with a board of county commissioners. These contracts may authorize each county to acquire rights of way for, survey, and construct farm to market, secondary, or feeder roads within the county by force account, unit price, or otherwise, as may be agreed by the commission and the board.

(4) If, on any highway construction work financed in whole or in part by federal funds the commission finds that enforcement of the provisions contained in sections 84-3507 and 82-1927, relating to public contractors working beyond contract time will result in a reduction in the full benefits of the Federal Highway Act of 1921 and all amendments thereto, it may waive enforcement of such provisions.

History: En. Sec. 9-102, Ch. 197, L. 1965; amd. Sec. 1, Ch. 278, L. 1974; amd. Sec. 150, Ch. 316, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 278 and once by Ch. 316. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made

a composite section embodying the changes made by both amendments.

Amendments

Chapter 278, Laws of 1974, added subsection (4).

Chapter 316, Laws of 1974, substituted "United States secretary of transportation" for "United States secretary of commerce" in the first sentence of subsection (3) and made minor changes in phraseology.

32-4103. Bidder's security — contractor's bond. (1) Whenever the commission calls for competitive bidding, each bidder shall meet all requirements of section 6-501 [R. C. M., 1947].

(2) Every contractor awarded a contract by the commission shall meet all requirements set forth in sections 6-401—6-404 [R. C. M., 1947]. For the purposes of those sections with relation to contracts with the commission, a contract shall not be completed until the commission, while formally convened, affirmatively accepts all of the work thereunder.

History: En. Sec. 9-103, Ch. 197, L. 1965.

Compiler's Note

The compiler has inserted the bracketed references to R. C. M., 1947.

CHAPTER 42—CONTRACTS OF COUNTIES AND LOCAL IMPROVEMENT DISTRICTS

- Section 32-4201. Contracts for county roads.
 32-4202. Bids on county road contracts—award of contract.
 32-4203. County road contractors to furnish bonds.
 32-4204. Letting of contract for bridge.
 32-4205. Letting of contract by local improvement district—bids.
 32-4206. Improvement district contract—award.
 32-4207. Execution of contract by board—limit on liability.

32-4201. Contracts for county roads. (1) When the estimated cost of opening, establishing, constructing, changing, abandoning, discontinuing, or widening a county road exceeds one thousand dollars (\$1,000), the work may, in the discretion of the board, be let by contract, unless the board shall find that such work may be otherwise done at less cost.

(2) Before any such contract shall be let, the board shall advertise for bids at least once a week for two (2) consecutive weeks, in a newspaper of general circulation in the county.

History: En. Sec. 9-201, Ch. 197, L. 1965.

of Chapter 9 of the Highway Code, entitled "Contracts of Counties and Local Improvement Districts."

Compiler's Note

This chapter was designated as Part 2

32-4202. Bids on county road contracts—award of contract. Each bidder shall comply with the requirements of section 6-501 [R. C. M., 1947]. The contract shall be awarded to the lowest responsible bidder in accordance with the requirements of sections 41-701—41-703, 82-1924, and 82-1926, and the board may reserve the right to reject any and all bids. When there is no prevailing rate of wages set by collective bar-

gaining, the board shall determine the prevailing rate to be stated in the contract.

History: En. Sec. 9-202, Ch. 197, L. 1965.

Compiler's Note

The compiler has inserted the bracketed reference to R. C. M., 1947.

32-4203. County road contractors to furnish bonds. Before entering upon performance of the work, the contractor shall comply with the requirements of sections 6-401—6-404 [R. C. M., 1947]. For the purposes of those sections with relation to contracts with the board, a contract shall not be completed until the board, while formally convened, affirmatively accepts all of the work thereunder.

History: En. Sec. 9-203, Ch. 197, L. 1965

32-4204. Letting of contract for bridge. (1) All bids for construction or repair of bridges shall meet these requirements:

(a) If the department has adopted or established a standard plan and specifications, the bids must be submitted thereon.

(b) All bids must be sealed. Each bidder shall meet the requirements of section 6-501, R. C. M. 1947.

(2) The board may reject any and all bids. If a contract is awarded, the board shall do so in accordance with the requirements of sections 41-701—41-703, 82-1924, and 82-1926. When there is no prevailing rate of wages set by collective bargaining, the board shall determine the prevailing rate to be stated in the contract. The contract must be entered with the unanimous consent of the members of the board.

(3) Before entering upon performance of the work, the contractor shall comply with the requirements of sections 6-401—6-404, R. C. M. 1947. For the purposes of those sections with relation to contracts with the board, a contract shall not be completed until the board, while formally convened, affirmatively accepts all of the work thereunder.

History: En. Sec. 9-204, Ch. 197, L. 1965; amd. Sec. 151, Ch. 316, L. 1974.

partment" for "commission" in subdivision (1)(a); and made minor changes in punctuation.

Amendments

The 1974 amendment substituted "de-

32-4205. Letting of contract by local improvement district—bids. (1) After the board has made the order creating and establishing the local improvement district, the local committee of supervisors shall advertise for bids. The advertisement shall state generally the work to be done and shall refer to the plans and specifications. It shall also fix the time for opening bids in the office of the board. Each bidder shall meet the requirements of section 6-501 [R. C. M., 1947].

(2) At that time, the committee shall open all bids. It may reject all of them and readvertise for bids. No contract shall be awarded at a greater sum than the estimate of cost provided for in part 4 of chapter 5 of this code [chapter 31 of this title].

History: En. Sec. 9-205, Ch. 197, L. 1965.

Compiler's Note

The compiler has inserted the bracketed reference to R. C. M., 1947.

32-4206. Improvement district contract—award. (1) If the committee awards a contract, it shall do so in accordance with the requirements of sections 41-701—41-703, 82-1924, and 82-1926. When there is no prevailing rate of wages set by collective bargaining, the committee shall determine the prevailing rate to be stated in the contract.

(2) Before entering upon performance of the contract, the contractor shall comply with the requirements of sections 6-401—6-404 [R. C. M., 1947]. For the purposes of those sections with relation to contracts with the committee, a contract shall not be completed until the committee, while formally convened, affirmatively accepts all of the work thereunder.

(3) Partial payments may be provided for in the contract, and paid when certified by the county surveyor and committee.

History: En. Sec. 9-206, Ch. 197, L. 1965. **Compiler's Note**

The compiler has inserted the bracketed reference to R. C. M., 1947.

32-4207. Execution of contract by board—limit on liability. The contract shall be executed in the name of and on behalf of the county by the board and attested with the county seal for the use and benefit of the local improvement district. The county shall not be subject to any claim or liability in an amount greater than that agreed upon with the district in the order fixing the amount chargeable to the county.

History: En. Sec. 9-207, Ch. 197, L. 1965.

CHAPTER 43—CONTROL OF ACCESS

- Section 32-4301. Policy.
 32-4302. Definitions.
 32-4303. Designation as controlled access highway—resolution—findings.
 32-4305. Powers of highway authorities.
 32-4306. Design of controlled access facility—entrance and exit restricted.
 32-4307. New and existing facilities—elimination of grade crossings.
 32-4308. Existing roads and streets as service roads.
 32-4308.1. Maintenance of frontage roads.
 32-4309. Marking of controlled access highway or facility with signs.
 32-4310. Commercial enterprise or structure prohibited.
 32-4311. Violations—penalties.

32-4301. Policy. The legislative assembly declares it to be the policy of this state to facilitate the flow of traffic and promote public safety by controlling access to:

(1) Highways included by the federal highway administration [roads] in the national system of interstate highways.

(2) Throughways and intersections with throughways.

(3) Such other federal-aid and state highways as shall be designated by the commission in accordance with the requirements set forth in this chapter.

History: En. Sec. 10-101, Ch. 197, L. 1965; amd. Sec. 152, Ch. 316, L. 1974.

vision (1) were inserted by the compiler to indicate apparent surplusage.

Compiler's Notes

This chapter was designated as Chapter 10 of the Highway Code, entitled "Control of Access."

The brackets around "roads" in subdi-

Amendments

The 1974 amendment substituted "federal highway administration" for "bureau of public roads" in subdivision (1); and made a minor change in style.

DECISIONS UNDER FORMER LAW

Judicial Determination of Necessity

In adopting the former controlled access highway law (32-2001 et seq.) the legislature is presumed to have considered sections 93-9905 and 93-9911 R. C. M.

1947, and the power to determine the public necessity of a proposed highway or facility remains with the trial judge. *State Highway Commission v. Yost Farm Co.*, 142 M 239, 384 P 2d 277.

32-4302. Definitions. When used in this chapter:

(1) "Interstate highway" means a highway included as a part of the national system of interstate highways.

(2) "Controlled access highway" means those portions of an interstate highway, throughway, or throughway intersection which the commission designates for through traffic, or other federal-aid or state highway over, from or to which owners or occupants of abutting land or other persons have no easement of access or only a limited easement of access, light, air, or view. It also means those portions of spurs to the interstate highway system which the commission designates as unsafe or impeded by unrestricted access of traffic from intersecting streets or alleys or public or private roads or ways of passage.

(3) "Controlled access facility" means and includes streets, alleys, public roads, private roads, and ways of passage intersecting a controlled access highway and real property contiguous to the right of way of a controlled access highway.

(4) "Existing highway" means and includes highways, roads, and streets established, constructed, and in use on March 2, 1955. It does not include highways, roads, or streets, established, constructed, and in use after that date, or highways, roads, or streets, or portions thereof relocated after that date.

(5) "Arterial highway" means a state highway designated by agreement between the commission and the secretary of transportation as part of the federal-aid primary system and any highway so designated as a part of the federal-aid secondary system which has been constructed and is being used primarily for through traffic on a continuous route.

(6) "Throughway" means a portion of an arterial highway constructed and used for carrying traffic partially or entirely around a town or city or a portion thereof.

(7) "Throughway intersection area" means an area within a radius of three hundred (300) feet from the point of intersection of the center lines of a throughway and a public road, street, or highway.

(8) "Highway authorities" or "authority" means the entities in state, county, and municipal governments which have authority to construct, repair, and maintain highways, roads, and streets.

History: En. Sec. 10-102, Ch. 197, L. 1965; amd. Sec. 153, Ch. 316, L. 1974.

retary of transportation" for "secretary of commerce" in subdivision (5); and made minor changes in phraseology and style.

Amendments

The 1974 amendment substituted "sec-

32-4303. Designation as controlled access highway—resolution—findings. (1) No portion of any interstate highway, throughway or throughway intersection, or other federal-aid or state highway shall be designated as a controlled access highway unless the commission shall adopt a reso-

lution so designating it. The resolution shall be adopted by the majority vote of the members in attendance at any regular or special meeting. In it, the commission shall find and determine:

(a) That it is necessary and desirable that the owners or occupants of the abutting land or other persons shall have no easement of access or only a limited easement of access, light, air, or view.

(b) That it is necessary and desirable that the rights of, or easements to access, light, air, or view be acquired by the state so as to prevent such portion of highway from becoming unsafe for or impeded by unrestricted access of traffic from intersecting streets, alleys, public or private roads or ways of passage.

(2) The resolution shall contain a statement of the reasons for its adoption, and shall set forth the location, distance, and termini of the portion of the highway designated as a controlled access highway.

History: En. Sec. 10-103, Ch. 197, L. 1965; amd. Sec. 1, Ch. 215, L. 1969.

ment by the United States that access must be controlled shall be a basis of necessity for the passing of the resolution" and renumbered former subsection (3) as subsection (2).

Amendments

The 1969 amendment deleted former subsection (2) which read, "The require-

32-4304. Repealed.

Repeal

Section 32-4304 (Sec. 10-104, Ch. 197, L. 1965), prohibiting the designation of a controlled access highway without a

written petition from the municipal or county governing body, was repealed by Sec. 2, Ch. 436, Laws 1973. For new law, see sec. 32-4305 (2).

32-4305. Powers of highway authorities. (1) Those authorities of the state, counties, and municipalities authorized to participate in construction and maintenance of highways may plan, designate, establish, regulate, vacate, alter, improve, maintain, and provide controlled access facilities for public use. Each such authority shall, by resolution, make the findings and determinations provided for in section 10-103 [32-4303] of this chapter.

(2) Within incorporated cities and towns, and upon county roads or secondary highways, the department of highways shall not control access without the consent of the appropriate governing body.

(3) Each authority may also exercise, with relation to controlled access facilities, any and all additional authority now or hereafter vested in it over highways, roads, or streets within its respective jurisdiction. It may regulate, restrict, or prohibit the use of controlled access facilities by any vehicles or traffic.

History: En. Sec. 10-105, Ch. 197, L. 1965; amd. Sec. 1, Ch. 436, L. 1973.

sent" in subsection (2) for "each authority shall be subject to the consent."

Amendments

The 1973 amendment inserted "or secondary highways" in subsection (2); and substituted "the department of highways shall not control access without the con-

Repealing Clause

Section 2 of Ch. 436, Laws 1973 read "Section 32-4304, R. C. M. 1947, is repealed."

32-4306. Design of controlled access facility—entrance and exit restricted. (1) Each highway authority may so design any controlled

access facility and so regulate, restrict, or prohibit access as to best serve the traffic for which the facility is intended. In so doing, it may divide and separate any controlled access facility into separate roadways by the construction of raised curbs, central dividing sections, or other physical separations, or by designating the separate roadways by signs, markers, stripes, and other devices.

(2) No person shall have any right to enter upon, exit from, or cross any controlled access facility except at designated points at which access may be permitted. Terms and conditions governing such access may be specified from time to time.

History: En. Sec. 10-106, Ch. 197, L. 1965.

32-4307. New and existing facilities—elimination of grade crossings.

(1) Each highway authority may provide for elimination of intersections at grade of controlled access highways or controlled access facilities with existing federal-aid and state highways, county roads, and city or town streets. Elimination shall be accomplished at the boundary of the controlled access right of way.

(2) After the establishment of any controlled access highway or facility, no private or public highway or street which is not a part of the highway or facility shall intersect it at grade. No street, road, highway, or other public way shall be opened into or connected with any controlled access highway or facility without the prior consent and approval of the appropriate highway authority.

(3) The commission may, whenever it determines that the public safety is not thereby impaired, authorize the continued intersection at grade of lightly traveled farm entrances and minor public roads as ways of access to controlled access highways in sparsely populated rural areas. The commission shall have sole jurisdiction to determine the existence and location of any intersection with interstate highways, throughways and other federal-aid and state highways.

History: En. Sec. 10-107, Ch. 197, L. 1965.

32-4308. Existing roads and streets as service roads. (1) In connection with the development of any controlled access highway or facility, each highway authority may plan, designate, establish, use, regulate, alter, improve, maintain, and vacate local service roads and streets. Each authority may designate as local service roads and streets any existing road or street.

(2) Service roads and streets shall be of appropriate design. They shall be separated from the controlled access highway or facility by means of all devices determined to be necessary to carry out the provisions of this chapter.

(3) Each authority shall exercise jurisdiction over service roads and streets in the same manner as is authorized over controlled access highways or facilities.

History: En. Sec. 10-108, Ch. 197, L. 1965.

32-4308.1. Maintenance of frontage roads. Frontage roads shall be maintained by the department of highways.

History: En. Sec. 1, Ch. 90, L. 1965; frontage roads and amending section 32-amd. Sec. 154, Ch. 316, L. 1974. 2002 to define "frontage road."

Compiler's Notes

This section was assigned inadvertently to Chapter 20 of Title 32 prior to repeal of Chapter 20 by Sec. 12-109, Ch. 197, L. 1965.

Amendments

The 1974 amendment substituted "department of highways" for "state highway commission of the state of Montana"; and made a minor change in phraseology.

Title of Act

An act to provide for maintenance of

32-4309. Marking of controlled access highway or facility with signs. Any controlled access highway or facility and portions thereof shall be physically marked by signs indicating to drivers of vehicles the points at which they enter and leave a controlled access area.

History: En. Sec. 10-109, Ch. 197, L. 1965.

32-4310. Commercial enterprise or structure prohibited. No commercial enterprise or structure shall be constructed or operated on the publicly owned right of way of a controlled access highway or facility or on any publicly leased land used in connection therewith.

History: En. Sec. 10-110, Ch. 197, L. 1965.

32-4311. Violations—penalties. (1) On any controlled access highway or facility it is unlawful for any person to:

(a) Drive a vehicle over, upon, or across any curb, central dividing section, or other separation or dividing line.

(b) Make a left turn or a semicircular or U-turn except through an opening provided for that purpose in the dividing curb, section, separation, or line.

(c) Drive any vehicle except in the proper lane, in the proper direction, and to the right of the central dividing curb, separation, section or line.

(d) Drive any vehicle from a local service road except through an opening provided for that purpose in the dividing curb, section, or line which separates the service road from the highway or facility.

(e) Construct, operate, or maintain any road or private driveway connecting with the highway or facility without first obtaining permission in writing from the highway authority having jurisdiction and, with the exception of an interstate highway, from the local governing body.

(2) Any person who violates any of the provisions of this section is guilty of a misdemeanor. Upon arrest and conviction therefor, he shall be punished by a fine of not less than five dollars (\$5) nor more than one hundred dollars (\$100), or by imprisonment in the city or county

jail for not less than five (5) days nor more than ninety (90) days, or by both fine and imprisonment.

History: En. Sec. 10-111, Ch. 197, L. 1965.

CHAPTER 44—GOOD ROADS DAY—OBSTRUCTIONS, ENCROACHMENTS AND DEBRIS ON HIGHWAYS

- Section 32-4401. Good Roads day.
 32-4403. Excavations across highways—permits and bridging.
 32-4404. Liability for permitting water to overflow.
 32-4405. Highway encroachments—power to remove.
 32-4406. Notice to remove encroachment.
 32-4407. Penalty for failure to remove encroachment promptly.
 32-4408. Removal of encroachment—actions—prosecution of offenses.
 32-4409. Prosecution by county attorney.
 32-4410. Dumping garbage or other debris or refuse.
 32-4411. Highway encroachments—removal.
 32-4412. Notice of encroachment.
 32-4413. Time limit for removal—penalty.
 32-4414. Denial of encroachment—department action—when owner to pay department expense.

32-4401. Good Roads day. The third Tuesday in June is hereby designated "Good Roads day." The governor may annually, by public proclamation, request the people of the state to contribute toward the improvement and safety of public highways.

History: En. Sec. 11-101, Ch. 197, L. 1965.

Compiler's Note

This chapter was designated as Chapter 11 of the Highway Code, entitled "Miscellaneous."

32-4402. Repealed.

Repeal Section 32-4402 (Sec. 11-102, Ch. 197, L. 1965), relating to injuries to highways and trees, was repealed by Sec. 209, Ch. 316, Laws of 1974.

32-4403. Excavations across highways—permits and bridging. (1)
 (a) Any person contemplating the excavation or construction of any ditch, dike, flume or canal across a public highway shall obtain a written permit from the board of county commissioners, road supervisor or county surveyor of said district before beginning construction or excavation.

(b) Any person obtaining said written permit shall bridge at once, in accordance with plans and specifications furnished by the board of county commissioners.

(2) Any such bridge shall be maintained by the county.

(3) Any person obtaining a construction permit or any person using the water of such ditch, dike, flume or canal shall keep the same in repair where such water may flow over or in any way injure a public highway.

History: En. Sec. 11-103, Ch. 197, L. 1965.

32-4404. Liability for permitting water to overflow. (1) Every person who excavates or constructs or owns any ditch, dike, flume or canal,

or stores, distributes or uses water for any purpose and permits the water to flow over any public highway to the injury thereof, must upon notification by the board of county commissioners, road supervisor or county surveyor of the district where such overflow occurred, repair the damages occasioned. If such repairs are not made within a reasonable time, the district must make them and recover the expense thereof in an action at law.

(2) Every person constructing, owning or using such ditch or flume who permits an overflow is liable as provided in section 94-3565.

History: En. Sec. 11-104, Ch. 197, L. of subsection (2), was repealed by Sec. 32, Ch. 513, Laws 1973, effective January 1, 1974.

Compiler's Notes

Section 94-3565, referred to at the end

32-4405. Highway encroachments—power to remove. (1) If any highway is encroached upon by fence, building, or otherwise, the road supervisor or county surveyor of the district must give notice, orally or in writing, requiring the encroachment to be removed from the highway.

(2) If the encroachment obstructs and prevents the use of the highway for vehicles, the road supervisor or county surveyor must immediately remove the same.

(3) The board of county commissioners may at any time order the road supervisor or county surveyor to immediately remove any encroachment.

History: En. Sec. 11-105, Ch. 197, L. 1965.

32-4406. Notice to remove encroachment. (1) Notice to remove the encroachment immediately, specifying the breadth of the highway and the place and extent of the encroachment, must be given to the occupant or owner of the land or person owning or causing the encroachment.

(2) Notice must be given in the following manner:

(a) By leaving it at his place of residence if such person resides in the county; or

(b) By posting it on the encroachment, if such person does not reside in the county.

History: En. Sec. 11-106, Ch. 197, L. 1965.

32-4407. Penalty for failure to remove encroachment promptly. If the encroachment is not removed immediately, or removal is not diligently conducted, the one who causes, owns, or controls the encroachment is liable to a penalty of ten dollars (\$10) for each day the same continues.

History: En. Sec. 11-107, Ch. 197, L. 1965.

32-4408. Removal of encroachment—actions—prosecution of offenses. (1) If the encroachment is denied, the road supervisor shall commence

in the proper court an action to abate the same as a nuisance. If he recovers judgment, he may have his costs and ten dollars (\$10) for every day such nuisance remained after notice.

(2) If the encroachment is not denied, and is not removed for five (5) days after notice is complete, the road supervisor or county surveyor may remove it at the expense of the owner or occupant of land, or of the person owning or controlling the encroachment. He may recover the expense of removal, ten dollars (\$10) for each day the encroachment remained after notice, and costs in an action brought for that purpose.

History: En. Sec. 11-108, Ch. 197, L. 1965.

32-4409. Prosecution by county attorney. The county attorney, upon complaint of the road supervisor, county surveyor, or any other person, shall prosecute all actions heretofore provided in the name of the state of Montana. All penalties shall be paid into the general fund of the county.

History: En. Sec. 11-109, Ch. 197, L. 1965.

32-4410. Dumping garbage or other debris or refuse. (1) It shall be unlawful to dump or leave any garbage, dead animal, or other debris or refuse:

(a) In or upon any highway, road, street, or alley of this state.

(b) In or upon any public recreational property, highway, street, or alley under the control of the state of Montana or any political subdivision thereof, or any officer or agent or department thereof.

(c) Within two hundred yards of such public highway, road, street, or alley, or public recreational property.

(d) On privately owned property where hunting, fishing or other recreation is permitted, provided this subsection shall not apply to the owner, his agents or those disposing of debris or refuse with the owner's consent.

(2) Any person found guilty of a violation of this section shall be fined in the sum not exceeding one hundred dollars (\$100), or imprisoned in the county jail for a period not exceeding thirty (30) days, or be punished by both such fine and imprisonment, in the discretion of the court.

(3) The provisions of this section shall be enforced by all highway patrolmen, sheriffs, policemen, and all other enforcement agencies and officers of the state of Montana. In addition, game wardens shall have the right to enforce the provisions of this section on public recreational property and on private property where public recreation is permitted.

History: En. Sec. 11-110, Ch. 197, L. 1965; amd. Sec. 1, Ch. 112, L. 1969.

Amendments

The 1969 amendment added subdivision (d) to subsection (1); in subsection (2)

increased the maximum fine from \$25.00 to \$100.00; and, in subsection (3), authorized game wardens to enforce anti-littering provisions on private property where public recreation is permitted, as well as on public recreational property.

32-4411. Highway encroachments—removal. (1) If any highway under the jurisdiction of the highway commission is encroached upon by

a fence, building, structure, sign, marker, or other obstruction, the department of highways may give notice in writing to the person erecting or maintaining such encroachment, requiring the same to be removed.

(2) If the encroachment obstructs and prevents the use of the highway for vehicles, the department of highways may immediately remove the same without the notice required by section 32-4412.

History: En. 32-4411 by Sec. 1, Ch. 231, L. 1975.

Title of Act
An act to provide for the removal of encroachments on highways under the jurisdiction of the department of highways.

32-4412. Notice of encroachment. (1) Notice to remove the encroachment, specifying the width of the highway right of way and the place and extent of the encroachment, must be given to the person erecting or maintaining such encroachment.

(2) Notice must be given in the following manner:

(a) in writing by certified mail sent to the person's business or personal address or by personal service;

(b) if such address cannot be found, by posting it on the encroachment.

History: En. 32-4412 by Sec. 2, Ch. 231, L. 1975.

32-4413. Time limit for removal—penalty. If the encroachment is not permanently affixed to the land, such encroachment shall be removed from the right of way within two (2) days after receipt of the notice. If such an encroachment remains on the right of way after this period of time, the person who causes, owns, or controls the encroachment shall be liable for the cost of such removal.

History: En. 32-4413 by Sec. 3, Ch. 231, L. 1975.

32-4414. Denial of encroachment—department action—when owner to pay department expense. (1) If the encroachment is denied, the department of highways shall commence appropriate legal action to have said encroachment removed. If the department recovers a judgment, it shall have its costs, and if the encroachment is not removed within five (5) days after entry of judgment, then the department of highways may remove it at the expense of the person who causes, owns or controls it.

(2) If an encroachment affixed to the land is not denied, and is not removed within five (5) days after receipt of the notice, then the department of highways may remove it at the expense of the person who causes, owns, or controls it. The department may recover the expense of removal and costs in an action brought for that purpose.

History: En. 32-4414 by Sec. 4, Ch. 231, L. 1975.

CHAPTER 45—JUNKYARDS ALONG ROADS

Section 32-4513. Purposes of act.

32-4514. Definitions.

32-4515. License required.

32-4516. Issuance of license.

32-4517. Restrictions as to location.

32-4518. Junkyards lawfully in existence.

32-4519. Rules governing screening.

32-4520. Authority to acquire interest in land for screening and removal of junkyards.

32-4521. Injunction.

32-4522. Agreements with the United States.

32-4523. Interpretation.

32-4501 to 32-4512. Repealed.

Repeal

These sections (Secs. 1 to 12, Ch. 136, L. 1965), relating to the regulation of

junkyards along roads, were repealed by Sec. 13, Ch. 285, Laws 1967.

32-4513. Purposes of act. (1) For the purposes of promoting the public safety, health and welfare, and the convenience and enjoyment of public travel, to protect the public investment in public highways, and to preserve and enhance the scenic beauty of lands bordering public highways, it is hereby declared to be in the public interest to regulate and restrict the establishment, operation and maintenance of junkyards in areas adjacent to the interstate and primary systems within this state.

(2) The legislative assembly hereby finds and declares that junkyards which do not conform to the requirements of this act are public nuisances.

History: En. Sec. 1, Ch. 285, L. 1967.

Title of Act

An act providing for the control of junkyards; setting forth definition; restricting location along certain highways; requiring an annual license and fee; re-

quiring certain junkyards to be obscured by means of natural objects or fences; providing authority to purchase or condemn in certain situations; providing penalties for violation; and repealing sections 32-4501 through 32-4512, Revised Codes of Montana, 1947.

32-4514. Definitions. As used in this act only:

(1) "Interstate system" means that portion of the national system of interstate and defense highways located within this state, as officially designated, or as may hereafter be so designated by the state highway commission and approved by the secretary of transportation pursuant to the provisions of title 23, United States Code, "Highways."

(2) "Primary system" means that portion of connected main highways, as officially designated, or as may hereafter be so designated, by the commission and approved by the secretary of transportation, pursuant to the provisions of title 23, United States Code, "Highways."

(3) "Junk" means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel and other old or scrap ferrous or nonferrous material.

(4) "Junkyard" means any establishment or place of business which is maintained, operated or used for storing, keeping, buying or selling

junk; or for the maintenance or operation of an automobile graveyard; or a garbage dump or sanitary fill.

(5) "Automobile graveyard" means any establishment or place of business which is maintained, used or operated for storing, keeping, buying or selling wrecked, scrapped, ruined or dismantled motor vehicles or motor vehicle parts.

History: En. Sec. 2, Ch. 285, L. 1967.

32-4515. License required. No person shall establish, operate or maintain a junkyard, any portion of which is within one thousand (1,000) feet of the nearest edge of the right of way of any interstate or primary highway, without obtaining a license.

History: En. Sec. 3, Ch. 285, L. 1967;
amd. Sec. 12, Ch. 410, L. 1973.

Amendments

The 1973 amendment deleted "from the commission" from the end of the section.

32-4516. Issuance of license.—(1) The department of health and environmental sciences may issue licenses for the establishment, maintenance, and operation of motor vehicle wrecking facilities and graveyards as provided in Title 69, chapter 68. The issuance, denial, or revocation of a license under the provisions of Title 69, chapter 68, may, on the basis of 32-4520, be appealed to the board of health and environmental sciences.

(2) The department of highways may object to and participate as a party in all decisions concerning the issuance, denial, or revocation of a license under the provisions of Title 69, chapter 68, if the facility in question is within 1,000 feet of the nearest edge of the right-of-way of any interstate or primary highway. If the department of highways objects to the licensing of a facility pursuant to this subsection, it shall proceed under the provisions of section 32-4520(2).

(3) The department of highways may issue a license for a junkyard that is not a motor vehicle wrecking facility as defined in Title 69, chapter 68.

(4) Nothing in this section prohibits the department of highways from acquiring an interest in land for screening purposes or paying for screening installation and materials as authorized by this chapter.

History: En. Sec. 4, Ch. 285, L. 1967;
amd. Sec. 13, Ch. 410, L. 1973; amd. Sec.
9, Ch. 252, L. 1977.

Amendments

The 1973 amendment substituted "department of health and environmental sciences, with the concurrence of the department of highways" for "commission"; deleted "sole" before "authority"; and deleted the last four sentences, relating to license fees and expiration date.

The 1977 amendment inserted the subsection (1) designation; deleted "with the concurrence of the department of high-

ways" before "may issue" in the first sentence of subsection (1); substituted "motor vehicle wrecking facilities and graveyards as provided in Title 69, chapter 68" for "junkyards within the limits herein defined" at the end of the first sentence of subsection (1); added the second sentence of subsection (1); added subsections (2) through (4); and made minor changes in phraseology and punctuation.

Effective Date

Section 14 of Ch. 410, Laws 1973 read "This act is effective July 1, 1973."

32-4517. Restrictions as to location. No license shall be granted for the establishment, maintenance or operation of a junkyard within one

thousand (1,000) feet of the nearest edge of the right of way of any highway on the interstate or primary systems except the following:

(1) Those which are screened by natural objects, planting, fences or other appropriate means so as not to be visible from the main traveled way of any such highway, or otherwise removed from sight.

(2) Those located within areas which are zoned for industrial use under authority of law.

(3) Those located within unzoned industrial areas, which areas shall be determined from actual land uses and defined by regulations to be promulgated by the commission.

(4) Those which are not visible from the main traveled way of any such highway.

History: En. Sec. 5, Ch. 285, L. 1967.

32-4518. Junkyards lawfully in existence. (1) A junkyard lawfully in existence on July 1, 1967, which is within one thousand (1,000) feet of the nearest edge of the right of way and visible from the main traveled way of a highway on the interstate or primary systems shall be fenced or screened, if feasible, by the department of highways at locations on the highway right of way or in areas acquired for these purposes outside the right of way so as not to be visible from the main traveled way of the highway.

(2) Notwithstanding any other provision of this act, a junkyard lawfully in existence on October 22, 1965, which does not conform to the requirements of this act and which the United States secretary of transportation finds as a practical matter cannot be screened, is not required to be removed until July 1, 1970.

History: En. Sec. 6, Ch. 285, L. 1967; July 1, 1967" for "on the effective date of this act" in subsection (1); substituted "department of highways" for "commission" in subsection (1); and made minor changes in phraseology.

Amendments

The 1974 amendment substituted "on

32-4519. Rules governing screening. (1) The department of health and environmental sciences shall adopt rules governing the screening or shielding of motor vehicle wrecking facilities as provided in Title 69, chapter 68.

(2) The department of highways may adopt rules governing the materials to be used in and the location, planting, construction, and maintenance of screening or fencing required by this chapter.

History: En. Sec. 7, Ch. 285, L. 1967; amd. Sec. 156, Ch. 316, L. 1974; amd. Sec. 10, Ch. 252, L. 1977.

Amendments

The 1974 amendment substituted "department" for "commission"; and made a minor change in phraseology.

The 1977 amendment inserted subsection (1); designated the former section as subsection (2); inserted "of highways" after "department" at the beginning of subsection (2); and made minor changes in phraseology and punctuation.

32-4520. Authority to acquire interest in land for screening and removal of junkyards. (1) When the department determines that it is in

the best interests of the state, it may acquire such lands or interests in lands as may be necessary to provide adequate screening.

(2) When the department determines that the topography of the land adjoining the highway will not permit adequate or economically feasible screening, it may acquire by gift, purchase, exchange or condemnation such interests in lands as may be necessary to secure the relocation, removal or disposal of junkyards which were either:

(a) Lawfully in existence on October 22, 1965; or

(b) Lawfully along any highway made a part of the interstate or primary systems on or after October 22, 1965, and before January 1, 1968; or

(c) Lawfully established on or after January 1, 1968.

(3) The department shall pay just compensation to the owner for the relocation, removal or disposal of any such junkyard.

History: En. Sec. 8, Ch. 285, L. 1967;
amd. Sec. 157, Ch. 316, L. 1974.

Amendments

The 1974 amendment substituted "department" for "commission" throughout the section.

32-4521. Injunction. The department may apply to the district court for the county in which is located any junkyard not conforming to the requirements of this act for an injunction to abate such nuisance.

History: En. Sec. 9, Ch. 285, L. 1967;
amd. Sec. 158, Ch. 316, L. 1974.

Amendments

The 1974 amendment substituted "department" for "commission."

32-4522. Agreements with the United States. The department may enter into agreements with the United States secretary of transportation as provided in Title 23, United States Code, relating to the control of junkyards in areas adjacent to the interstate and primary systems, and take action in the name of the state to comply with the terms of those agreements.

History: En. Sec. 10, Ch. 285, L. 1967;
amd. Sec. 159, Ch. 316, L. 1974.

Amendments

The 1974 amendment substituted "department" for "commission"; and made a minor change in phraseology.

32-4523. Interpretation. Nothing in this act shall be construed to abrogate or affect the provisions of any lawful ordinance, regulation or resolution which are more restrictive than the provisions of this act.

History: En. Sec. 11, Ch. 285, L. 1967.

Separability Clause

Section 12 of Ch. 285, Laws 1967 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or

more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clause

Section 13 of Ch. 285, Laws 1967 read "Sections 32-4501 through 32-4512, Revised Codes of Montana, 1947, are repealed."

CHAPTER 46—TRAFFIC SAFETY PROGRAM

Section 32-4601. Purpose of chapter.

32-4602. Definitions.

32-4605. Duties.

32-4606. Funds.

32-4607. Local programs.

32-4601. Purpose of chapter. To promote public safety, health, and welfare, and to reduce traffic deaths, injuries and property losses resulting from traffic accidents, it is in the public interest to establish a highway traffic safety program and provide for its administration. It is in the public interest to implement, modernize, and improve the following traffic safety activities: driver performance, including, but not limited to, driver education, driver testing to determine proficiency to operate motor vehicles; driver examinations, both physical and mental; driver licensing; pedestrian performance; establish an effective accident record system, including traffic accident investigation to determine the probable cause of accidents, injuries and deaths; to improve and establish a system of vehicle registration, vehicle operation and vehicle inspection; to assist in the improving of highway design and maintenance, including lighting, markings, and surface treatment to improve safety; establish an effective traffic control system; promote the adoption of uniform vehicle laws; provide for surveillance of traffic for detection and correction of high or potentially high accident locations; establish emergency services, including, but not limited to, communications, medical or mechanical assistance, and ambulance service for injured persons; establish an effective compilation and storage program of reports and records through electronic data processing.

History: En. Sec. 1, Ch. 177, L. 1967; amd. Sec. 74, Ch. 348, L. 1974.

Title of Act

An act for the establishment of a state highway traffic safety program, setting forth definitions; establishing administration thereof, authorizing political subdivision participation, permitting the acceptance of federal funds, the collection and expenditure of monies; providing for programs for driver education training and certification of instructors, regula-

tion of schools including licensing thereof; adult driver training and retraining programs; research, development and procurement of practice driving facilities, simulators and teaching aids, licensing, revocation and regulation of drivers and operators of all motor vehicles.

Amendments

The 1974 amendment substituted "chapter" for "act" in the caption; and made minor changes in phraseology.

32-4602. Definitions. Unless the context requires otherwise, in this chapter:

(1) "Highway traffic safety program" means a program designed to reduce traffic accidents, deaths, and injuries to persons, and damage to property. The program shall be in accordance with uniform standards established by the secretary of commerce of the United States under Title 23, United States Code Annotated, as amended. Nothing in this chapter restricts or prohibits the establishment of standards which enlarge or implement the federal standards.

(2) "Political subdivisions" means every county, incorporated city or town, and school district within the boundaries of the state.

(3) "Department" means the department of community affairs provided for in Title 82A, chapter 9.

History: En. Sec. 2, Ch. 177, L. 1967; amd. Sec. 75, Ch. 348, L. 1974; amd. Sec. 34, Ch. 213, L. 1975.

Amendments

The 1974 amendment substituted the definition of "Department" for the defini-

tion of "Board"; and made minor changes in phraseology and punctuation.

The 1975 amendment substituted "department of community affairs" for "department of intergovernmental relations" in subdivision (3).

32-4603, 32-4604. Repealed.

Repeal

Sections 32-4603 and 32-4604 (Secs. 3, 4, Ch. 177, L. 1967), relating to the Mon-

tana highway traffic safety board, were repealed by Sec. 107, Ch. 348, Laws of 1974.

32-4605. Duties. (1) The governor is responsible for the administration of the highway traffic safety program. The governor may contract and do all other things necessary to secure the full benefits available to this state under the Federal Highway Safety Act of 1966, and, in so doing, may co-operate with federal and state agencies, private and public organizations, and individuals to effectuate the purposes of that enactment, and all amendments to it. For purposes of participation in the Federal Highway Safety Act of 1966, the governor shall designate the superintendent of public instruction as the state agency responsible for all aspects of federally assisted driver education and safety programs in the public schools, including the approval of the programs; certification of teachers; and the acceptance, allocation, and expenditure of funds for driver education in accordance with applicable federal laws and regulations. Nothing in this chapter interferes with the provisions of section 75-7303 or chapter 79 of Title 75, R. C. M., 1947.

(2) The department of community affairs shall:

(a) advise and assist the governor in all matters of highway safety and establish comprehensive training programs, including establishment and regulation of driver training schools and certification of the schools and instructors and establishment of adult training and retraining programs;

(b) develop and procure practice driving facilities, simulators, and other teaching aids for school and driver training use;

(c) establish a continuing and adequate research program designed to determine the causes of accidents and effect a program of prevention;

(d) establish a uniform system of driver licensing, including mental and physical standards; and

(e) prescribe and establish safety regulations for motor vehicles and operators.

History: En. Sec. 5, Ch. 177, L. 1967; amd. Sec. 76, Ch. 348, L. 1974; amd. Sec. 35, Ch. 213, L. 1975.

Compiler's Notes

The Federal Highway Safety Act of 1966, referred to in this section, is compiled as sections 401 to 404 of Title 23, United States Code.

Amendments

The 1974 amendment substituted the last sentence in subsection (1) for "Nothing in this act shall interfere with the provisions of chapter 51 or chapter 53 of Title 75, Revised Codes of Montana, 1947"; substituted "department of intergovernmental relations" for "board" at the beginning of subsection (2); and

made minor changes in phraseology, punctuation and style. The 1975 amendment substituted "de- partment of community affairs" for "de- partment of intergovernmental relations" at the beginning of subsection (2).

32-4606. Funds. The governor and the department may enter into contracts with the federal government to secure maximum federal appropriation. At least forty per cent (40%) of all federal funds received by the state shall be spent by the political subdivisions of the state in carrying out local approved highway traffic safety programs. Except as provided in this chapter, the governor may accept all gifts, money, and funds to implement the purposes of this chapter. The expenditure of funds, exclusive of the federal appropriation, shall be maintained at a level which shall not fall below the average level of the expenditures for the last two (2) full fiscal years preceding July 1, 1966, as determined by the expenditures of state and political subdivisions.

History: En. Sec. 6, Ch. 177, L. 1967; amd. Sec. 77, Ch. 348, L. 1974. department" for "highway traffic safety board"; substituted "this chapter" for "this act" in two places; and made minor changes in phraseology and punctuation.

Amendments

The 1974 amendment substituted "de-

32-4607. Local programs. Except as provided in this chapter, all highway traffic safety programs of political subdivisions must be approved by the governor and no funds may be spent unless his approval is obtained. All local and state officials shall co-operate with the governor and department to accomplish the purposes of this chapter. The governor shall administer the highway traffic safety programs of this state and its political subdivisions in accordance with this chapter and federal rules.

History: En. Sec. 7, Ch. 177, L. 1967; amd. Sec. 78, Ch. 348, L. 1974.

Amendments

The 1974 amendment substituted "this chapter" for "this act" throughout the section; substituted "department" for "highway traffic safety board" in the second sentence; substituted "governor shall administer" for "governor is hereby empowered to administer" in the last sentence; and made minor changes in phraseology.

Separability Clause

Section 8 of Ch. 177, Laws 1967 read "The provisions of this act shall be severable; and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitutional or void, the remainder of this act shall continue in full force and effect."

Repealing Clause

Section 9 of Ch. 177, Laws 1967 repealed all acts and parts of acts in conflict therewith.

CHAPTER 47—OUTDOOR ADVERTISING ALONG HIGHWAYS

- Section 32-4715. Legislative findings and policy—short title.
 32-4716. Definition of terms.
 32-4717. Outdoor advertising prohibited in proximity to highway—exceptions—standards and permits.
 32-4718. Rules controlling outdoor advertising.
 32-4719. Standards for permitted advertising.
 32-4720. Permits required—identification tags—pre-existing structures.
 32-4721. Notice of violations—remedial action.
 32-4722. Advertising deemed unlawful—notice to remove—hearing—appeal to district court.
 32-4723. Acquisition of outdoor advertising rights—compensation.
 32-4724. Agreements with secretary establishing specifications for advertising.
 32-4725. More restrictive regulations preserved.
 32-4726. Relaxation of regulations if federal law changed.

32-4727. Violation as misdemeanor.

32-4728. Nonconforming advertising as nuisance.

32-4701 to 32-4714. Repealed.

Repeal

Sections 32-4701 to 32-4714 (Secs. 1-14, Ch. 287, L. 1967; Sec. 1, Ch. 211, L. 1969; Secs. 1 to 4, Ch. 220, L. 1971), relating to

zoning and outdoor advertising, were repealed by Sec. 17, Ch. 2, 2nd Ex. Laws 1971. For new law, see secs. 32-4715 to 32-4728.

32-4715. Legislative findings and policy—short title. (a) The legislature finds and declares that in order to promote the safety, convenience and enjoyment of travel on, and protection of the public investment in highways within this state, and to preserve and enhance the natural scenic beauty or aesthetic features of the highways and adjacent areas, it shall be the policy of this state that the erection and maintenance of outdoor advertising in areas adjacent to the right of way of the interstate and primary systems within this state shall be regulated in accordance with the terms of this act and the rules and regulations promulgated by the commission, pursuant thereto. It is the intention of the legislature in this act to provide a statutory basis for regulation of outdoor advertising consistent with the public policy relating to areas adjacent to the interstate and primary systems declared by Congress in Title 23, United States Code, "Highways."

(b) This act may be cited as the "Outdoor Advertising Act."

History: En. Sec. 1, Ch. 2, 2nd Ex. L. 1971.

Title of Act

An act to provide for the control of outdoor advertising adjacent to interstate

and primary highway systems in compliance with the Highway Beautification Act of 1965; repealing sections 32-4701 through 32-4714, R. C. M. 1947, and providing an effective date.

32-4716. Definition of terms. As used in this act: (a) "Interstate system" means that portion of the national system of interstate and defense highways located within this state, as officially designated, or as may hereafter be so designated by the commission and approved by the secretary pursuant to the provisions of Title 23, United States Code, "Highways."

(b) "Primary system" means that portion of connected main highways, as officially designated or as may hereafter be so designated by the commission and approved by the secretary pursuant to the provisions of Title 23, United States Code, "Highways."

(c) "Outdoor advertising" means any outdoor sign, display, light, device, figure, painting, drawing, message, plaque, poster, billboard, or other structure which is designed, intended or used to advertise or inform and which is visible from any place on the main traveled way of the interstate or primary systems.

(d) "Commission" means the state highway commission of Montana.

(e) "Secretary" means the secretary of the United States department of transportation.

(f) "Safety rest area" means an area or site established and main-

tained within or adjacent to the right of way by or under public supervision or control, for the convenience of the traveling public.

(g) "Information center" means an area or site established or maintained at safety rest areas for the purpose of informing the public of places of interest within the state and providing such other information as the commission may consider desirable.

(h) "Visible" means capable of being seen, and legible, without visual aid by a person of normal visual acuity.

(i) "Commercial or industrial zone" means an area which is used or reserved for business, commerce, or trade pursuant to comprehensive local zoning ordinances or regulations, or enabling state legislation, or state legislation itself, including highway service areas lawfully zoned as highway service zones where the primary use of the land is used or reserved for commercial and roadside services, other than outdoor advertising, to serve the traveling public. Areas temporarily zoned as commercial or industrial by an interim regulation or map adopted as an emergency measure pursuant to section 16-4711, R. C. M. 1947, shall not be considered as covered by this definition.

(j) "Unzoned commercial or industrial area" means an area not zoned by state or local law, regulation or ordinance which is occupied by one or more industrial or commercial activities, other than outdoor advertising, on the lands along the highway for a distance of six hundred (600) feet immediately adjacent to the activities, and those lands directly opposite on the other side of the highway to the extent of the same dimensions, and to a maximum depth of six hundred sixty (660) feet when measured from the highway right of way; provided, those lands on the opposite side of the highway are not deemed scenic or having aesthetic value as determined by the commission.

(k) "Commercial or industrial activities" means for purposes of subsection (j) those activities generally recognized as commercial or industrial by zoning authorities in this state, except that none of the following activities shall be considered commercial or industrial:

(i) Agricultural, forestry, grazing, farming and related activities including wayside fresh produce stands.

(ii) Transient or temporary activities.

(iii) Activities not visible from the main traveled way.

(iv) Activities conducted in a building principally used as a residence.

(v) Railroad tracks and minor sidings.

(vi) Activities more than six hundred and sixty (660) feet from the nearest edge of the right of way.

(l) "Maintain" means to allow to exist, subject to the provisions of this act.

(m) "Maintenance" means to repair, refurbish, repaint or otherwise keep an existing sign structure in a state suitable for use.

(n) "Interchange" or "intersection" means those areas and their approach where traffic is channeled off or onto an interstate route includ-

ing the de-acceleration lanes or acceleration lanes from or to another federal, state, county, city, or other route.

(o) "Urban areas" means an urbanized area or place as designated by the United States bureau of the census having a population of five thousand (5,000) or more and within boundaries fixed by the department of highways, which said boundaries shall, as a minimum, encompass the entire urban place designated by said bureau of the census.

History: En. Sec. 2, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 1, Ch. 89, L. 1974; amd. Sec. 1, Ch. 216, L. 1975.

Amendments

The 1974 amendment added the last sentence to subdivision (i).

The 1975 amendment inserted the maximum depth provision in subdivision (j); and added subdivision (o).

32-4717. Outdoor advertising prohibited in proximity to highway—exceptions—standards and permits. (a) Outdoor advertising may not be erected or maintained which is within six hundred and sixty (660) feet of the nearest edge of the right of way and which is visible from any place on the main traveled way, of an interstate or primary system, except:

(i) Directional and other official signs and notices, which signs and notices include, but are not limited to, signs and notices pertaining to natural wonders, scenic and historical attractions, as authorized or required by law.

(ii) Signs, displays and devices advertising the sale or lease of property upon which they are located.

(iii) Signs, displays and devices advertising activities conducted on the property upon which they are located.

(iv) Signs, displays and devices located in areas which are zoned industrial or commercial by a bona fide state, county or local zoning authority.

(v) Signs, displays and devices located in unzoned commercial or industrial areas, which areas shall be determined from actual land uses and by agreement between the department of highways and the secretary and defined by rules adopted by the commission. The exception granted by this subsection shall not apply to signs, displays and devices located within an unzoned area in which the commercial or industrial activity used in defining the area has ceased for a period of nine (9) months.

(b) Outdoor advertising authorized under subsections (i), (iv), and (v) of subsection (a) of this section shall conform with standards contained in, and shall bear permits required in, rules which are adopted by the commission and this act.

(c) Outdoor advertising may not be erected or maintained beyond six hundred sixty (660) feet of the nearest edge of the right of way of an interstate or primary highway outside of an urban area if such outdoor advertising is or was erected with the purpose of its message being read from such main traveled way and visible from such main traveled way unless such outdoor advertising meets the criteria of subsections (i), (ii) or (iii) of subsection (a) of this section. Should such outdoor ad-

vertising meet said criteria, it shall conform with standards contained in rules which are adopted by the commission and this act.

History: En. Sec. 3, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 160, Ch. 316, L. 1974; amd. Sec. 2, Ch. 216, L. 1975.

partment of highways" for "commission" in subdivision (a)(v); and made minor changes in phraseology.

The 1975 amendment added subsection (c).

Amendments

The 1974 amendment substituted "de-

32-4718. Rules controlling outdoor advertising. The commission may adopt rules to control the erection and maintenance of outdoor advertising along the interstate and primary highway systems in conformance with the terms of this act and in conformity with section 131 of Title 23, United States Code, as amended.

History: En. Sec. 4, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 161, Ch. 316, L. 1974.

Amendments

The 1974 amendment made minor changes in phraseology.

32-4719. Standards for permitted advertising. Except for outdoor advertising beyond six hundred sixty (660) feet of the nearest edge of the right of way of an interstate or primary highway outside of an urban area, outdoor advertising permitted under section 32-4717 shall conform to the following requirements:

(a) Signs may not be erected or maintained which exceed one thousand two hundred (1,200) square feet in area including border and trim, but excluding base or apron, supports, and other structural members.

(b) Maximum length sixty (60) feet.

(c) Maximum height forty (40) feet, as measured from the ground or, if the sign is attached to a structure, as measured from the base of the sign itself.

(d) No more than two (2) facings visible and readable from the same direction on the main traveled way may be erected on any one (1) sign structure. Whenever two (2) facings are so positioned, neither shall exceed three hundred twenty-five (325) square feet.

(e) Double-faced, back-to-back and V-type signs shall be considered as a single sign or structure.

(f) Where two (2) or more faces, back to back, are supported by separate structures each shall be considered a single sign.

(g) No two (2) signs shall be spaced less than five hundred (500) feet apart adjacent to an interstate highway, or limited-access primary highway except that signs may be erected closer than five hundred (500) feet if they are separated by buildings or other obstructions in such a manner that only one (1) sign facing located within the above spacing distance is visible from the highway at any one (1) time.

(h) Signs may not be located within five hundred (500) feet of any of the following which are adjacent to the highway, unless the signs are in an incorporated area:

(i) Public parks.

(ii) Public forests.

(iii) Public playgrounds.

(iv) Scenic areas designated as such by the state highway department or other state agency having and exercising this authority.

(v) Cemeteries.

(i) A sign may not be located on an interstate highway or freeway within five hundred (500) feet of an interchange, or intersection at grade, or rest area. The five hundred (500) feet is to be measured along the interstate or freeway from the beginning or ending of the pavement widening at the exit from or entrance to the main traveled way.

(j) Signs may be illuminated, subject to the following restrictions:

(i) Signs which contain, include, or are illuminated by a flashing, intermittent, or moving light or lights are prohibited, except those giving public service information such as time, date, temperature, weather or similar information.

(ii) Signs which are not effectively shielded as to prevent beams or rays of light from being directed at a portion of the traveled ways of the interstate or federal aid primary highway or which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interfere with a driver's operation of a motor vehicle are prohibited.

(iii) A sign may not be so illuminated that it interferes with the effectiveness of, or obscures an official traffic sign, device, or signal.

(k) The location of sign structures situated on the primary highways between streets, roads or highways entering or intersecting the main traveled way shall conform to the following minimum spacing criteria:

(i) Where the distance between center lines of intersecting streets or highways is less than one thousand (1,000) feet, a minimum spacing between structures of one hundred fifty (150) feet may be permitted between the intersecting streets or highways.

(ii) Where the distance between center lines of intersecting streets or highways is one thousand (1,000) feet or more, minimum spacing between sign structures shall be three hundred (300) feet.

History: En. Sec. 5, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 2, Ch. 89, L. 1974; amd. Sec. 162, Ch. 316, L. 1974; amd. Sec. 3, Ch. 216, L. 1975.

Amendments

Chapter 89, Laws of 1974, substituted "section 32-4717" for "section 3(a)(i), (ii), (iii), (iv), and (v)" in the introduction; inserted subdivision (f); and

redesignated former subdivisions (f) to (j) as (g) to (k).

Chapter 316, Laws of 1974, made minor changes in phraseology and punctuation.

The 1975 amendment inserted at the beginning of the section the exception for outdoor advertising more than 660 feet from the highway; and made a minor change in style.

32-4720. Permits required — identification tags — pre-existing structures. (1) A sign authorized by subsections (i), (iv), and (v) of subsection (a) of section 32-4717 may not be constructed or maintained without a permit. Applications for permits shall be made to the department on forms furnished by it. The department shall require reasonable information to be furnished, including a statement that the owner or occupant

of the land has consented to the erection or maintenance of the sign on the land. A permit must be obtained for each sign and the application for the permit must be accompanied by an initial fee of six dollars (\$6).

(2) Permits shall be issued for three (3) years, assigned a permit number, and renewed every three (3) years thereafter upon payment of three dollars (\$3) without the filing of a new application. All fees received shall be paid into the state highway account in the earmarked revenue fund.

(3) The department shall issue with each new permit a permanent identification tag not larger than thirty-six (36) square inches which shall be affixed to the sign in a position readily visible from the highway.

(4) Notwithstanding the foregoing provisions of this section, the department shall issue permits and identification tags, upon application and payment of the requisite fee for a structure lawfully in existence on June 23, 1971, and the permits shall thereafter be renewed for a period of time as is prescribed in this section, unless the structure is removed for improper maintenance.

(5) Notwithstanding the foregoing provisions of this section, the department shall issue permits and identification tags, upon application and payment of the requisite fee for outdoor advertising lawfully in existence on the day prior to the effective date of this act and made nonconforming by virtue of subsection (c) of section 32-4717, and the permits shall thereafter be renewed for a period of time as is prescribed in this section, unless the structure is removed for improper maintenance.

History: En. Sec. 6, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 163, Ch. 316, L. 1974; amd. Sec. 1, Ch. 22, L. 1975; amd. Sec. 4, Ch. 216, L. 1975.

Compiler's Notes

This section was amended twice in 1975, once by Ch. 22 and once by Ch. 216. Neither amendatory act mentioned nor included the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1974 amendment substituted "department" for "commission" throughout the section; substituted "in existence on June 23, 1971" in subsection (4) for "in existence on the day prior to the effective date of this act"; and made minor changes in phraseology and style.

Chapter 22, Laws of 1975, increased the size of the identification tag from six to thirty-six square inches in subsection (3).

Chapter 216, Laws of 1975, added subsection (5).

32-4721. Notice of violations—remedial action. When the department determines that a willful false or misleading statement has been made in the application for a permit or that the structure for which a permit was issued is not in a reasonable state of repair, or is unsafe, the department shall notify the holder of the permit in writing, either by certified mail or by personal service, of the violation and specify that remedial action shall be taken within sixty (60) days or the permit will be revoked and action for removal of the sign commenced as provided in section 32-4722. No notice is required prior to filing a complaint after the notice period has lapsed.

History: En. Sec. 7, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 164, Ch. 316, L. 1974.

Amendments

The 1974 amendment substituted "department" for "commission" in two places and made a minor change in style.

32-4722. Advertising deemed unlawful—notice to remove—hearing—appeal to district court. (1) The following outdoor advertising is unlawful:

(a) when erected after June 24, 1971, contrary to this act, or erected after the effective date of this act beyond 660 feet of the nearest edge of the right-of-way of an interstate or primary highway outside of an urban area with the purpose of its message being read from such main-traveled way and visible from such main-traveled way, unless such outdoor advertising meets the criteria of subsections (i), (ii), or (iii) of subsection (a) of 32-4717;

(b) when a permit is not obtained as prescribed in this act; or

(c) when a permittee fails to comply with a notice of violation as provided in 32-4721.

(2) The department shall give notice in writing, either by certified mail or by personal service, to the owner or occupant of the land on which advertising believed to be unlawful is located and to the owner of the outdoor advertising structure, if the latter is known, or if unknown, by posting notice, in a conspicuous place on the structure, of its intention to remove the unlawful advertising. Within 45 days after the notice, the owner of the land or of the structure may make a written request for a hearing before the commission to show cause why the structure should not be removed.

(3) If a hearing before the commission is not requested or if there is no appeal taken from the commission's decision at the hearing or if the commission's decision is affirmed on appeal, the department shall immediately remove or cause to be removed the unlawful outdoor advertising. The owner of the structure and the owner or occupant of the land are jointly and severally liable for the costs of the removal. The department may enter upon lands bearing outdoor advertising and make examination of such advertising. The department may, upon final determination by the commission that an item of outdoor advertising is unlawful, enter upon lands bearing such advertising and remove the unlawful advertising.

History: En. Sec. 8, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 3, Ch. 89, L. 1974; amd. Sec. 165, Ch. 316, L. 1974; amd. Sec. 5, Ch. 216, L. 1975; amd. Sec. 4, Ch. 234, L. 1977.

Amendments

Chapter 89, Laws of 1974 substituted "section 32-4721" for "section 7 of this act" at the end of subdivision (1)(c); inserted "or caused to be removed" after "immediately removed" in the first sentence of subsection (3); inserted the provisions in subsection (3) pertaining to the department's authority to enter upon lands for examinations and removal of unlawful advertising; and rewrote the last sentence of subsection (3) which read: "The commission shall incur no liability for causing this removal, except for damage caused by negligence of the commission, its agents or employees."

Chapter 316, Laws of 1974, changed the subsection designations from small

letters to numerals; substituted "after June 24, 1971" for "after the effective date of this act" in subdivision (1)(a); substituted "section 32-4721" for "section 7 of this act" at the end of subdivision (1)(c); substituted "department" for "commission" in the first sentence of subsection (2) and in two places in subsection (3); deleted provisions pertaining to the transcript and record of the commission hearing and procedure on appeal from a decision of the commission to the district court; and made minor changes in phraseology and punctuation.

The 1975 amendment added "or erected after the effective date * * * section 32-4717" to subdivision (1)(a).

The 1977 amendment deleted the former last sentence of subsection (3) reading "The department incurs no liability for the entry or entries except for injuries resulting from negligence, wantonness or malice"; and made minor changes in phraseology, punctuation and style.

Exhaustion of Administrative Remedies

Where defendant owned motel which had outdoor sign with flashing lights less than 660 feet from highway, contrary to law, county attorney could not enjoin

and abate sign as public nuisance until he had exhausted his administrative remedies pursuant to this section. State ex rel. Jones v. Giles, — M —, 541 P 2d 355.

32-4723. Acquisition of outdoor advertising rights—compensation. (a)

The department may acquire by gift, purchase, agreement, exchange or eminent domain, existing outdoor advertising and property rights pertaining to the advertising which were lawfully in existence on June 24, 1971, and which by virtue of section 32-4717(a) are nonconforming. The department may likewise acquire by gift, purchase, agreement, exchange or eminent domain existing outdoor advertising and property rights pertaining to the advertising which were lawfully in existence on the day prior to the effective date of this act and made nonconforming by virtue of section 2 [32-4717] of this act. Eminent domain shall be exercised in accordance with the laws of the state.

(b) Just compensation shall be paid for outdoor advertising and property rights pertaining to the advertising acquired through the process of eminent domain. The department may remove outdoor advertising found in violation of sections 32-4721 or 32-4722 without payment of compensation.

(c) Despite a contrary provision in this act, a sign may not be required to be removed without just compensation, unless found to be in violation of sections 32-4721 or 32-4722. Except as provided in sections 32-4721 and 32-4722, a sign may not be required to be removed unless at the time of removal or discontinuance there are sufficient funds, from whatever source, appropriated and immediately available to pay the just compensation required under this section, and unless at that time the federal funds required to be contributed under section 131 (g) of Title 23, United States Code, with respect to the outdoor advertising being removed, have been apportioned and are immediately available to this state.

History: En. Sec. 9, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 165, Ch. 316, L. 1974; amd. Sec. 6, Ch. 216, L. 1975.

Amendments

The 1974 amendment substituted "department" for "commission" in subsections (a) and (b); substituted "June 24, 1971" for "effective date of this act" in subsection (a); and made minor changes in phraseology and style.

The 1975 amendment substituted "section 32-4717(a)" for "this act" in the first sentence of subsection (a); and inserted the second sentence of subsection (a).

Effective Date

Section 7 of Ch. 216, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved March 31, 1975.

32-4724. Agreements with secretary establishing specifications for advertising. The department may enter into an agreement with the secretary regarding the size, lighting and spacing of outdoor advertising, as provided in this act, which may be erected and maintained within the areas adjacent to the interstate and primary highway system which are zoned commercial, industrial, or in such other unzoned commercial or industrial areas as may be determined by agreement, and as provided in this act.

History: En. Sec. 10, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 167, Ch. 316, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "highway commission of the state of Montana"; and made a minor change in phraseology.

32-4725. More restrictive regulations preserved. Nothing in this act shall be construed to abrogate or affect the provisions of any lawful ordinance, regulation or resolution, which is more restrictive than the provisions of this act.

History: En. Sec. 11, Ch. 2, 2nd Ex. L. 1971.

32-4726. Relaxation of regulations if federal law changed. In the event the general requirements of Title 23, United States Code, "Highways," or existing rules and regulations of the United States department of transportation become amended or changed to less restrictive conditions than presently exist, then, the commission must amend or change such rules and regulations that it may have adopted to come into conformity with the federal law, rule and regulation; however, in no event shall this act become more restrictive than is indicated herein by said federal action.

History: En. Sec. 12, Ch. 2, 2nd Ex. L. 1971.

Nonconforming Uses

Section 13, Ch. 2, 2nd Ex. L. 1971, read: "Outdoor advertising contracted for prior to the enactment of this act and which under the provisions of the act becomes nonconforming shall not be regulated as such until January 1, 1972."

Separability Clause

Section 14 of Ch. 2, 2nd Ex. Laws 1971 read "If any provision of this act, or the application of any provision to any person or circumstance, is held invalid, the remainder of this act shall not be affected thereby."

32-4727. Violation as misdemeanor. Any person violating any provision of this act is guilty of a misdemeanor.

History: En. Sec. 15, Ch. 2, 2nd Ex. L. 1971.

32-4728. Nonconforming advertising as nuisance. All outdoor advertising which does not conform to the requirements of this act is a public nuisance.

History: En. Sec. 16, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 3, Ch. 140, L. 1977.

Amendments

The 1977 amendment substituted "is a public nuisance" for "are public nuisances" at the end of the section.

Repealing Clause

Section 17 of Ch. 2, 2nd Ex. Laws 1971 read "Sections 32-4701 through Section 32-4714, R. C. M. 1947, are hereby repealed."

Effective Date

Section 18 of Ch. 2, 2nd Ex. Laws 1971 provided the act should be in effect from and after its passage and approval. Approved June 24, 1971.

Exhaustion of Administrative Remedies

Where defendant owned motel which had outdoor sign with flashing lights less than 660 feet from highway, contrary to law, county attorney could not enjoin and abate sign as public nuisance until he had exhausted his administrative remedies pursuant to 32-4722. State ex rel. Jones v. Giles, — M —, 541 P 2d 355.

CHAPTER 48—EXCAVATIONS IN PUBLIC STREETS

- Section 32-4801. Definitions.
 32-4802. Information to be sought before excavation made.
 32-4803. Procedure—filing with county clerk and recorder.
 32-4804. Liability for damage from failure to obtain information.
 32-4805. Liability for negligence notwithstanding information obtained.
 32-4806. Immunity from liability if information is not given within specified time.
 32-4807. Exemption for emergency repairs.
 32-4808. Information to be part of architects and engineers' plan.

32-4801. Definitions. The following definitions shall apply to this act:

(a) "Person" shall mean and include an individual, partnership, joint venture or corporation, and includes the employer of an individual.

(b) "Underground facility" shall mean any item of personal property which shall be buried or placed below ground for use in connection with the storage or conveyance of water, sewage, electronic, telephonic or telegraphic communications, electric energy, oil, gas, or other substances, and shall include but not be limited to pipes, sewers, conduits, cables, valves, lines, wires, manholes, and attachments to the aforesaid.

(c) "Excavation" shall mean and include any ditch, trench, cut, hole or change in grade.

History: En. Sec. 1, Ch. 180, L. 1971.

Title of Act

An act requiring persons excavating in any public street, alley, right of way

dedicated to public use or utility easement to obtain information as to existence therein of underground facilities, and providing civil penalties for failure so to do.

32-4802. Information to be sought before excavation made. No person shall make or begin any excavation in any public street, alley, right of way dedicated to the public use or utility easement without first obtaining information concerning the possible location of any underground facility from each and every public utility, municipal corporation or other person having the right to bury such underground facilities within the public street, alley, right of way or utility easement.

History: En. Sec. 2, Ch. 180, L. 1971.

32-4803. Procedure—filing with county clerk and recorder. Any person seeking information concerning the location of any underground facility must do so by request in writing. The person from whom such information is sought must acknowledge in writing receipt of such request and must provide such information in writing no later than the end of the normal business hours of the second full business day following the date of receipt [of] the request, Saturdays, Sundays and holidays excluded.

Every public utility, municipal corporation, or other person having the right to bury underground facilities, shall file with the county clerk and recorder in each county where the underground facilities are located, the name, address, and telephone number of the person or persons from whom the necessary information may be obtained.

History: En. Sec. 3, Ch. 180, L. 1971.

Compiler's Notes

The compiler has inserted the bracketed word "of" near the end of the first paragraph of this section.

32-4804. Liability for damage from failure to obtain information. If any underground facility is damaged by any person who has failed to obtain information as to its location as provided in section 3 [32-4803], then such person shall be liable to the owner of the underground facility for the entire cost of the repair of such facility.

History: En. Sec. 4, Ch. 180, L. 1971.

32-4805. Liability for negligence notwithstanding information obtained. The act of obtaining information as required by this act shall not excuse any person making any excavation from doing so in a careful and prudent manner nor shall it excuse such person from liability for any damage or injury resulting from his negligence.

History: En. Sec. 5, Ch. 180, L. 1971.

32-4806. Immunity from liability if information is not given within specified time. If information requested pursuant to section 3 [32-4803] of this act is not provided within the time specified therein, any person damaging or injuring underground facilities shall not be liable for such damage or injury, unless caused by his negligence.

History: En. Sec. 6, Ch. 180, L. 1971.

32-4807. Exemption for emergency repairs. The provisions of this act shall not apply to any person making repairs to an underground facility or repairs to the streets or alleys themselves in a situation of emergency when such repairs must be made within a shorter period of time than that provided for in section 3 [32-4803] of this act, provided, however, that this exemption from obtaining information shall not excuse the person making the repairs from any liability for damages caused by his negligence.

History: En. Sec. 7, Ch. 180, L. 1971.

32-4808. Information to be part of architects and engineers' plan. Architects and engineers designing or requiring excavating in or adjacent to any public street, alley or right of way dedicated to public use or utility easement shall obtain information as to underground facilities and then make said information a part of the plan by which the contractors operate. Nothing in this section shall excuse any person from the obligation imposed by section 2 [32-4802] of this act.

History: En. Sec. 8, Ch. 180, L. 1971.

Separability Clause

Section 9 of Ch. 180, Laws 1971 read "It is the intent of the legislative assembly that if a part of this act is invalid,

all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

TITLE 33—HOMESTEADS

Chapter 1. Homesteads, 33-102, 33-121, 33-124 to 33-127.

CHAPTER 1—HOMESTEADS

- Section 33-102. From what it may be selected.
33-121. After sale, money equal to homestead exemption protected.
33-124. Homesteads—quantity and value of land.
33-125. "Head of family" defined.
33-126. Mode of selection.
33-127. Declaration of homestead—must contain what.

33-102. (6946) From what it may be selected. If the claimant be married, the homestead may be selected from the property of either spouse. When the claimant is not married, but is head of a family, within the meaning of section 33-125, the homestead may be selected from any of his or her property.

History: En. Sec. 1671, Civ. C. 1895;
re-en. Sec. 4695, Rev. C. 1907; re-en. Sec.
6946, R. C. M. 1921; amd. Sec. 1, Ch. 1,
L. 1975. Cal. Civ. C. Sec. 1238.

Amendments

The 1975 amendment substituted "property of either spouse" for "property of the husband, or, with consent of the wife, from her separate property."

33-103. (6947) Repealed.

Repeal

Section 33-103 (Sec. 1672, Civ. C. 1895),

relating to the wife's separate property, was repealed by Sec. 6, Ch. 1, Laws 1975.

33-121. (6965) After sale, money equal to homestead exemption protected. The money paid to the claimant is entitled, for the period of six months thereafter, to the same protection against legal process and the voluntary disposition of either spouse, which the law gives to the homestead.

History: En. Sec. 1690, Civ. C. 1895;
re-en. Sec. 4714, Rev. C. 1907; re-en. Sec.
6965, R. C. M. 1921; amd. Sec. 2, Ch. 1,
L. 1975. Cal. Civ. C. Sec. 1257.

Amendments

The 1975 amendment substituted "disposition of either spouse" for "disposition of the husband."

33-124. (6968) Homesteads—quantity and value of land. Homesteads may be selected and claimed:

1 and 2. * * * [Same as parent volume.]

3. Such homestead, in either case, shall not exceed in value the sum of twenty thousand dollars (\$20,000), provided, however, that in any proceedings instituted to determine the value of such homestead, the assessed value of such land, with included appurtenances, if any, and of such dwelling house as appears on the last completed assessment roll preceding the institution of such proceedings shall be prima facie evidence of the value of the property claimed as a homestead.

History: En. Sec. 1693, Civ. C. 1895; re-en. Sec. 4717, Rev. C. 1907; re-en. Sec. 6968, R. C. M. 1921; amd. Sec. 1, Ch. 126, L. 1931; amd. Sec. 1, Ch. 166, L. 1937; amd. Sec. 1, Ch. 50, L. 1941; amd. Sec. 1, Ch. 266, L. 1965; amd. Sec. 1, Ch. 300, L. 1973. Cal. Civ. C. Sec. 1260.

Amendments

The 1965 amendment increased the maximum value of the homestead speci-

fied in paragraph 3 from \$2,500 to \$7,500.

The 1973 amendment increased the maximum value of a homestead specified in subdivision 3 from \$7,500 to \$20,000.

Effective Date

Section 2 of Ch. 266, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 9, 1965.

33-125. (6969) "Head of family" defined. The phrase "head of a family" as used in this chapter, includes within its meaning:

1. The husband and wife acting together or either one of them if they do not join in the particular transaction. In any given transaction which requires action by the "head of a family" the spouse who undertakes the transaction shall be deemed "head of the family" in regard to that particular transaction.

2. Every person who has attained the age of sixty years and who actually resides on the premises.

3. Every person who has residing on the premises with him or her, and under his or her care and maintenance, either:

First to Fourth. * * * [Same as parent volume.]

Fifth. An unmarried sister, brother or any other of the relatives mentioned in this section, who have attained the age of majority and are unable to take care of or support themselves.

History: En. Sec. 1694, Civ. C. 1895; re-en. Sec. 4718, Rev. C. 1907; re-en. Sec. 6969, R. C. M. 1921; amd. Sec. 1, Ch. 86, L. 1925; amd. Sec. 3, Ch. 1, L. 1975. Cal. Civ. C. Sec. 1261.

Amendments

The 1975 amendment substituted subdivision 1 for "The husband, when the claimant is a married person, or the wife, when the husband fails to join in the declaration"; and inserted "brother" in the Fifth item of subdivision (3).

33-126. (6970) Mode of selection. In order to select a homestead, the head of a family must execute and acknowledge, in the same manner as a grant of real property is acknowledged, a declaration of homestead, and file the same for record.

History: En. Sec. 1700, Civ. C. 1895; re-en. Sec. 4719, Rev. C. 1907; re-en. Sec. 6970, R. C. M. 1921; amd. Sec. 4, Ch. 1, L. 1975. Cal. Civ. C. Sec. 1262.

Amendments

The 1975 amendment substituted "head of a family" for "husband or other head of a family, or in case the husband has not made such selection, the wife."

33-127. (6971) Declaration of homestead—must contain what. The declaration of homestead must contain:

1. A statement, showing that the person making it is the head of a family. If both spouses join in the declaration, this fact shall be stated;

2 to 4. * * * [Same as parent volume.]

History: En. Sec. 1701, Civ. C. 1895; re-en. Sec. 4720, Rev. C. 1907; re-en. Sec. 6971, R. C. M. 1921; amd. Sec. 5, Ch. 1, L. 1975. Cal. Civ. C. Sec. 1263.

Amendments

The 1975 amendment deleted "or, when the declaration is made by the wife, showing that her husband has not made

such declaration, and that she therefore makes the declaration for their joint benefit" at the end of the first sentence of subdivision (1); and added "If both spouses join in the declaration, this fact shall be stated" in subdivision (1).

Repealing Clause

Section 6 of Ch. 1, Laws 1975 read "Section 33-103, R. C. M. 1947, is repealed."

33-129. (6973) Repealed.**Repeal**

Section 33-129 (Sec. 1703, Civ. C. 1895), relating to the tenure by which a home-

stead is held, was repealed by Sec. 15, Ch. 263, Laws of 1975.

TITLE 34—HOTELS

- Chapter 1. Liability to guests—lien for accommodations—penalty for defrauding, 34-101.
2. Sanitation and control by state board of health, Repealed—Section 12, Chapter 18, Laws of 1967.
 3. Licensing and regulation of lodging establishments, 34-301 to 34-307, 34-309 to 34-312.

CHAPTER 1—LIABILITY TO GUESTS—LIEN FOR ACCOMMODATIONS —PENALTY FOR DEFRAUDING

Section 34-101. Innkeeper's liability.

34-101. (7673) Innkeeper's liability. (1) An innkeeper is liable for all losses of or injuries to personal property placed by his guests under his care unless occasioned by an irresistible superhuman cause, by a public enemy, by the negligence of the owner, or by the act of someone whom he brought into the inn.

(2) The liability provided for in subsection (1) may not exceed \$500 for all personal property of each registered guest, unless the innkeeper consents in writing with the guest to assume a greater liability. An innkeeper whose liability is so limited shall notify the guest at the time of registration, in writing, that this limitation applies.

History: En. Sec. 2500, Civ. C. 1895; re-en. Sec. 5164, Rev. C. 1907; re-en. Sec. 7673; R. C. M. 1921; amd. Sec. 1, Ch. 14, L. 1977. Cal. Civ. C. Sec. 1859. Field Civ. C. Sec. 936.

Amendments

The 1977 amendment inserted the subsection (1) designation; added subsection (2); and made minor changes in style and punctuation.

CHAPTER 2—SANITATION AND CONTROL BY STATE BOARD OF HEALTH

(Repealed—Section 12, Chapter 18, Laws of 1967, effective January 1, 1968)

34-201 to 34-217. (2485 to 2495, 2497 to 2502) Repealed.

Repeal

These sections (Secs. 1 to 4, Ch. 160, L. 1917; Secs. 1 to 13, Ch. 36, L. 1919; Sec. 1, Ch. 84, L. 1921), relating to sani-

tation of hotels and lodging houses, were repealed by Sec. 12, Ch. 18, Laws 1967, effective January 1, 1968. For present law, see 34-301 to 34-310.

CHAPTER 3—LICENSING AND REGULATION OF LODGING ESTABLISHMENTS

- Section 34-301. Control and regulation of establishments required by public interest.
- 34-302. Definitions.
- 34-303. License required.
- 34-304. Fee—term of license.
- 34-305. Cancellation or denial of license—procedure.
- 34-306. Rules—co-operative agreements.
- 34-307. Inspections.
- 34-309. Penalty.

- 34-310. License fee—supersedes other fees.
 34-311. Provision of full-time nursing services prohibited.
 34-312. Complaints—monitoring—placement.

34-301. Control and regulation of establishments required by public interest. It is hereby found and declared that the public welfare requires control and regulation of the operation of establishments providing lodging space accommodations, as defined in section 2 [34-302] hereof, and the control, inspection, and regulation of persons engaged therein, in order to prevent or eliminate unsanitary and unhealthful conditions and practices, which conditions and practices may endanger public health. It is further found and declared that the regulation of establishments providing lodging space accommodations as above outlined is in the interest of social well-being and the health and safety of the state and all of its people.

History: En. Sec. 1, Ch. 18, L. 1967; amd. Sec. 1, Ch. 485, L. 1973.

Title of Act

An act to regulate establishments providing transient lodging space and/or accommodations; defining terms; providing for licensure and license fee; and providing procedure for cancellation or denial of license; empowering state board of health of Montana to make and enforce all necessary regulations including sanitary standards for such establishments; providing for public hearing on rules and regulations; and to establish co-operative agreements with other Montana agencies; providing for inspection and report of inspection; empowering state board of health of Montana to issue

subpoenas; prescribing penalties; providing for fee required by this act to supersede other fees for same purpose; directing that unconstitutionality of a part of this act shall not affect or impair the remainder; and repealing sections 34-201, 34-202, 34-203, 34-204, 34-205, 34-206, 34-207, 34-208, 34-209, 34-210, 34-211, 34-212, 34-213, 34-214, 34-215, 34-216, 34-217, Revised Codes of Montana, 1947, as amended or supplemented, and establishing effective date.

Amendments

The 1973 amendment deleted "transient" before "lodging space" in the first and second sentences; and made a minor change in phraseology.

34-302. Definitions. Unless the context requires otherwise in this act:

(a) "Person" includes an individual, partnership, corporation, association, county, municipality, co-operative group, or other entity engaged in the business of operating, owning, or offering the services of a hotel, motel, tourist home, retirement home or rooming house.

(b) "Board" means board of health and environmental sciences.

(c) "Department" means the department of health and environmental sciences.

(d) "Hotel or motel" includes a building or structure kept, used, or maintained as or advertised as, or held out to the public to be a hotel, motel, inn, motor court, tourist court, public lodging house or place where sleeping accommodations are furnished for a fee to transient guests with or without meals.

(e) "Tourist home" means an establishment or premises where sleeping accommodations are furnished to transient guests for hire or rent on a daily or weekly rental basis in a private home when the accommodations are offered for hire or rent for the use of the traveling public.

(f) "Transient guest" means a guest for only a brief stay, such as the traveling public.

(g) "Rooming house or retirement home" means buildings in which separate sleeping rooms are rented providing sleeping accommodations for three or more persons on a weekly, semimonthly, monthly or permanent basis; whether or not meals or central kitchens are provided, but without separated cooking facilities or kitchens within each room; and whose occupants do not need professional nursing services on a full-time basis.

History: En. Sec. 2, Ch. 18, L. 1967; amd. Sec. 2, Ch. 485, L. 1973; amd. Sec. 1, Ch. 325, L. 1977.

Amendments

The 1973 amendment inserted "retirement home or rooming house" at the end of subdivision (a); inserted "and environmental sciences" in subdivision (b); deleted former subdivision (c) defining "executive officer" and relettered subdivisions (d), (e) and (f), as (c), (d) and (e); inserted "and environmental sciences" at the end of subdivision (c); added subdivisions

(f) and (g); and made minor changes in style and phraseology.

The 1977 amendment substituted "whether or not meals or central kitchens are provided" in subdivision (g) for "with or without meals"; substituted "separated cooking facilities or kitchens within each room" in subdivision (g) for "separate cooking facilities for individual occupants"; added "and whose occupants do not need professional nursing services on a full-time basis" to subdivision (g); and made a minor change in style.

34-303. License required. Each year, every person engaged in the business of conducting or operating a hotel, motel, tourist home, retirement home or rooming house, shall procure a license issued by the department. A separate license is required for each establishment; however, where more than one of each type of establishment is operated on the same premises and under the same management, only one license is required which shall enumerate on the certificate thereof the types of establishments licensed. Applications for a license shall be made in writing to the department on such forms and with such pertinent information as it considers necessary. Existing licenses shall be renewed as a matter of right, unless conditions exist which are grounds for a cancellation or denial of a license.

If determination is made to deny an initial application for a license, or if a renewal application is denied and a license canceled, the denial or cancellation shall be preceded by written notice of the grounds therefor and the opportunity to request a hearing before the board to show cause why the license should be denied.

History: En. Sec. 3, Ch. 18, L. 1967; amd. Sec. 3, Ch. 485, L. 1973.

Amendments

The 1973 amendment inserted "retirement home or rooming house" in the first sentence of the first paragraph; substituted

"Existing licenses shall be renewed" for "Such licenses shall be granted" at the beginning of the last sentence in the first paragraph; added the second paragraph; and made minor changes in punctuation and style.

34-304. Fee—term of license. (a) There shall be paid to the department with each application for such license or for renewal of such license, an annual license fee of twenty dollars (\$20). These fees shall be deposited with the state treasury to the credit of the general fund.

(b) Each license shall expire on December 31 following its date of issue, unless canceled for cause. Renewal may be obtained annually by

paying the required annual license fee. Such license shall not be transferable nor be applicable to any premises other than that for which originally issued.

(c) Before June 30 of each year, the department shall pay to a local board of health as established under section 69-4504, 69-4506, or 69-4507, R. C. M. 1947, an amount from any general fund appropriation to the department which is for the purpose of inspecting establishments licensed under this act; provided, however, that there is a functioning local board of health, and the local board of health, local health officers, and sanitarians assist in the enforcement of the provisions of this chapter and the rules adopted under it.

(d) Before June 1 of each year, the local board of health shall submit to the department a list of the establishments in each jurisdiction that are licensed pursuant to this section. The funds received by the local board of health shall be deposited with the appropriate local fiscal authority and shall be in addition to the funds appropriated under section 69-4508, R. C. M. 1947.

History: En. Sec. 4, Ch. 18, L. 1967; amd. Sec. 4, Ch. 485, L. 1973; amd. Sec. 1, Ch. 505, L. 1975.

Amendments

The 1973 amendment increased the annual license fee from \$5 to \$10 in the first sentence of subsection (a); and substituted the present second sentence of

subsection (a) for a sentence reading, "Fees collected by the department of health shall be transmitted to the state treasurer and placed to the credit of the general fund."

The 1975 amendment increased the license fee from \$10 to \$20 in subsection (a); and added subsections (c) and (d).

34-305. Cancellation or denial of license—procedure. (1) The department may cancel a license if it finds, after proper investigation, that the licensee has violated this act or a rule effective under this act, and the licensee has failed or refused to remedy or correct the violation. Submission to the department of an acceptable plan of correction within ten (10) days after receipt from the department of written notice of violation, and execution of an acceptable plan within the time prescribed in the written notice of approval of the plan by the department shall be a bar to prosecution for violation.

(2) A license may not be denied or canceled by the department without delivery to the applicant or licensee of a written statement of the grounds therefor or the charge involved and an opportunity to answer at a hearing before the department to show cause, if any, why the license should not be denied or canceled. In such case, the licensee must make a written request to the board for a hearing within ten (10) days after notice of the grounds or charges has been received.

(3) When a multiple type establishment is licensed by the department, the denial or cancellation of the license may affect the entire establishment or only a portion of it as determined by the department (a multiple type establishment includes two or more of the following: hotel, motel, or tourist home).

(4) On cancellation of a license or the right to operate one or more of the multiple type establishments under same license, the license certificate shall be returned to the department for destruction or deletion of

types of establishment as the department may direct in its notice of cancellation.

(5) When the department furnishes evidence to the county attorney of a county in this state, the county attorney shall prosecute any person, firm, or corporation violating this act, or a rule effective under this act.

History: En. Sec. 5, Ch. 18, L. 1967; amd. Sec. 7, Ch. 349, L. 1974; amd. Sec. 2, Ch. 505, L. 1975.

Amendments

The 1974 amendment substituted references to department throughout the section for references to the executive officer of the department; deleted a next to last subsection which read "Any order made by the executive officer after hearing, as provided herein, denying or canceling any license may be reviewed by application for writ of review (certiorari) commenced in the district court of the

county in which the licensed premises are located, within ten (10) days from the date of notice in writing of the executive officer's order of denial or canceling such license has been served upon him"; and made minor changes in phraseology, punctuation and style.

The 1975 amendment substituted "hearing before the department" for "hearing before the board" in subsection (2).

Effective Date

Section 3 of Ch. 505, Laws 1975 read "This act is effective January 1, 1976."

34-306. Rules—co-operative agreements. (a) The department may adopt and enforce rules to preserve the public health and safety. These rules shall relate to construction, furnishings, housekeeping, personnel, sanitary facilities and controls, water supply, sewerage and sewage disposal system, refuse collection and disposal, registration and supervision, and fire and life safety code.

(b) The department is hereby authorized to enter into co-operative agreements with any of the state agencies or political subdivisions for the purpose of carrying out the provisions of this act, or any part thereof.

History: En. Sec. 6, Ch. 18, L. 1967; amd. Sec. 5, Ch. 485, L. 1973.

Amendments

The 1973 amendment deleted "and regulations" following "rules" in the first and second sentences of subsection (a); deleted from the end of the second sentence in subsection (a) a proviso requiring a public hearing on rules or regulations;

deleted the third sentence of subsection (a) which provided for notice of the public hearing; and inserted "and fire and life safety code" at the end of the second sentence in subsection (a).

Repealing Clause

Section 6 of Ch. 485, Laws 1973 read "Section 34-308, R. C. M. 1947, is repealed."

34-307. Inspections. (a) The department, through its employees, and through local, county and district health officers, sanitarians, or other authorized representatives, shall make all necessary investigations and inspections for enforcement of this act. Each local, county or district health officer, sanitarian, or other authorized representative shall make regular inspections as the rules and regulations of the department may direct, and such special inspections as the department may from time to time direct, and he shall make such reports relative to conditions existing within his district at such times and in such manner as the department may direct.

(b) All persons authorized by this act or by regulations adopted under this act shall have free access at all reasonable hours to any of the establishments listed and defined in section 2 [34-302], for the purpose of making inspections.

History: En. Sec. 7, Ch. 18, L. 1967; amd. Sec. 107, Ch. 349, L. 1974.

Amendments

The 1974 amendment substituted "department" for "board" in three places in the last sentence of subsection (a).

34-308. Repealed.

Repeal

Section 34-308 (Sec. 8, Ch. 18, L. 1967), giving the board authority to issue sub-

poenas and take testimony, was repealed by Sec. 6, Ch. 485, Laws 1973.

34-309. Penalty. Any person violating any provision of this act or regulation made hereunder shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars (\$50) nor more than one hundred dollars (\$100) for the first offense, and not less than seventy-five dollars (\$75) nor more than two hundred dollars (\$200) for the second offense; and for the third and subsequent offenses, by a fine of not less than two hundred dollars (\$200) and imprisonment in the county jail not to exceed ninety (90) days.

History: En. Sec. 9, Ch. 18, L. 1967.

34-310. License fee—supersedes other fees. Payment of the license fee stipulated herein shall be accepted in lieu of any and all existing state fees and charges for like purposes or intent which may be existent prior to the adoption of this act.

History: En. Sec. 10, Ch. 18, L. 1967.

Separability Clause

Section 11 of Ch. 18, Laws 1967 read "If any clause, sentence, paragraph, section or part of this act, shall for any reason, be adjudged or decreed to be invalid by any court of competent jurisdiction, such judgment or decree shall not affect, impair nor invalidate the remainder of this act but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which said judgment or decree shall have been rendered."

Repealing Clause

Section 12 of Ch. 18, Laws 1967 read "All acts or parts of acts in conflict herewith are hereby repealed and specifically sections 34-201, 34-202, 34-203, 34-204, 34-205, 34-206, 34-207, 34-208, 34-209, 34-210, 34-211, 34-212, 34-213, 34-214, 34-215, 34-216, 34-217, Revised Codes of Montana, 1947."

Effective Date

Section 13 of Ch. 18, Laws 1967 read "This act shall be effective January 1, 1968."

34-311. Provision of full-time nursing services prohibited. Hotels, motels, boarding houses, rooming houses, or similar accommodations may not provide professional nursing services to residents on a full-time basis.

History: En. 34-311 by Sec. 2, Ch. 325, L. 1977.

Title of Act

An act to amend section 34-302, R. C. M. 1947, to clarify the definition of

rooming houses and other similar accommodations; to prohibit such accommodations from providing nursing service on a full-time basis; and to provide for compliance.

34-312. Complaints—monitoring—placement. Whenever a complaint is filed with the department of health and environmental sciences that a person in need of professional nursing services is residing in a rooming house or other similar accommodation not licensed to provide such service, the department shall investigate and provide for appropriate placement of such person if it is found that professional nursing services are needed.

History: En. 34-312 by Sec. 3, Ch. 325, L. 1977.

TITLE 35—HOUSING

- Chapter 1. Housing authorities law, 35-103, 35-109, 35-115, 35-128, 35-129, 35-145.
4. Emergency war and veterans' housing facilities, 35-409.
5. Housing Act of 1975, 35-501 to 35-526.
6. Weatherization programs, 35-601 to 35-603.

CHAPTER 1—HOUSING AUTHORITIES LAW

- Section 35-103. Definitions.
35-109. Powers of authority.
35-115. Form and sale of bonds.
35-128. Notice, hearing and creation of authority for a county.
35-129. Commissioners and powers of authority for a county.
35-145. Home owners' loan corporation bonds as security for deposit of public funds.

35-103. (5309.3) Definitions. The following terms, wherever used or referred to in this act shall have the following respective meanings, unless a different meaning clearly appears from the context:

(1) to (18). * * * [Same as parent volume.]

(19) "Elderly families" shall mean families the head of which (or his spouse) is sixty (60) years of age or over and who otherwise qualify as "persons of low income" within the meaning of the definition set forth in (18) above.

History: En. Sec. 3, Ch. 140, L. 1935;
amd. Sec. 1, Ch. 193, L. 1957; amd. Sec. 1,
Ch. 133, L. 1973.

Amendments

The 1973 amendment reduced the minimum age specified in subdivision (19) from 65 to 60 years.

35-109. (5309.9) Powers of authority. An authority shall constitute a public body and a body corporate and politic, exercising public powers, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this act, including the following powers in addition to others herein granted:

To investigate into living, dwelling and housing conditions and into the means and methods of improving such conditions; to determine where unsafe, or unsanitary dwelling or housing conditions exist; to study and make recommendations concerning the plan of any city or municipality located within its boundaries in relation to the problem of clearing, re-planning and reconstruction of areas in which unsafe, or unsanitary dwelling or housing conditions exist, and the providing of dwelling accommodations for persons of low income, and to co-operate with any city, municipal or regional planning agency; to prepare, carry out and operate housing projects; to provide for the construction, reconstruction, improvement, alteration or repair of any housing project or any part thereof; to take over by purchase, lease or otherwise any housing project located within its boundaries undertaken by any government; to act as agent for the federal government in connection with the acquisition, construction, oper-

ation and/or management of a housing project or any part thereof; to arrange with any city or municipality located in whole or in part within its boundaries or with a government for the furnishing, planning, re-planning, installing, opening or closing of streets, options or property rights or for the furnishing of property or services in connection with a project;

To arrange with the state, its subdivision and agencies, and any county, city or municipality of the state, to the extent that it is within the scope of each of their respective functions, (a) to cause the services customarily provided by each of them to be rendered for the benefit of such housing authority and/or the occupants of any housing projects and (b) to provide and maintain parks and sewage, water and other facilities adjacent to or in connection with housing projects and (c) to change the city or municipality map, to plan, replan, zone or rezone any part of the city or municipality; to lease or rent any of the dwelling or other accommodations or any of the lands, buildings, structures or facilities embraced in any housing project and to establish and revise the rents or charges therefor; to enter upon any building or property in order to conduct investigations or to make surveys or soundings; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, or otherwise any property real or personal or any interest therein from any person, firm, corporation, city, municipality, or government;

To acquire by eminent domain any real property, including improvements and fixtures thereon; to sell, exchange, transfer, assign, or pledge any property real or personal or any interest therein to any person, firm, corporation, municipality, city, or government; to own, hold, clear and improve property, to insure or provide for the insurance of the property or operations of the authority against such risks as the authority may deem advisable; to procure insurance or guarantees from a federal government of the payment of any debts or parts thereof secured by mortgages made or held by the authority on any property included in any housing project;

To borrow money upon its bonds, notes, debentures or other evidences of indebtedness and to secure the same by pledges of its revenues, and (subject to the limitations hereinafter imposed) by mortgages upon property held or to be held by it, or in any other manner; in connection with any loan, to agree to limitations upon its right to dispose of any housing project or part thereof or to undertake additional housing projects; in connection with any loan by a government, to agree to limitations upon the exercise of any powers conferred upon the authority by this act; to invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control;

To sue and be sued; to have a seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority to make and from time to time amend and repeal bylaws, rules and regulations not inconsistent with this act, to carry into effect the powers and purposes of the authority;

To conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information;

To issue subpoenas requiring the attendance of witnesses or the production of books and papers and to issue commissions for the examination of witnesses who are out of the state or unable to attend before the authority, or excused from attendance; and to make available to such agencies, boards or commissions as are charged with the duty of abating or requiring the correction of nuisances or like conditions, or of demolishing unsafe or unsanitary structures within its territorial limits, its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety or welfare.

Any of the investigations or examinations provided for in this act may be conducted by the authority or by a committee appointed by it, consisting of one or more commissioners, or by counsel, or by an officer or employee specially authorized by the authority to conduct it. Any commissioner, counsel for the authority, or any person designated by it to conduct an investigation or examination shall have power to administer oaths, take affidavits and issue subpoenas or commissions.

An authority may exercise any or all of the powers herein conferred upon it, either generally or with respect to any specific housing project or projects, through or by an agent or agents which it may designate, including any corporation or corporations which are or shall be formed under the laws of this state, and for such purposes an authority may cause one or more corporations to be formed under the laws of this state or may acquire the capital stock of any corporation or corporations.

Any corporate agent, all of the stock of which shall be owned by the authority or its nominee or nominees, may to the extent permitted by law exercise any of the powers conferred upon the authority herein. In addition to all of the other powers herein conferred upon it, an authority may do all things necessary and convenient to carry out the powers expressly given in this act. No provisions with respect to the acquisition, operation or disposition of property by other public bodies shall be applicable to an authority unless the legislature shall specifically so state.

History: En. Sec. 9, Ch. 140, L. 1935;
amd. Sec. 2, Ch. 68, L. 1953; amd. Sec. 4,
Ch. 193, L. 1957; amd. Sec. 1, Ch. 259,
L. 1974.

Amendments

The 1974 amendment deleted a final paragraph requiring authorization of projects by ordinances approved by the voters.

35-115. (5309.15) Form and sale of bonds. The bonds of the authority shall be authorized by its resolution and shall be issued in one or more series and shall bear such date or dates, mature at such time or times, not exceeding sixty (60) years from their respective dates, bear interest at such rate or rates, be in such denominations (which may be made interchangeable) be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms

of redemption (with or without premium) as such resolution or its trust indenture or mortgage may provide.

The bonds may be sold at public sale held after notice published once at least ten (10) days prior to such sale in a newspaper having a general circulation in the city and in a financial newspaper published in the city of _____ or in the city of _____, provided, however, that such bonds may be sold to the federal government at private sale without any public advertisement. The bonds may be sold at such price or prices as the authority shall determine.

Pending the authorization, preparation, execution or delivery of definitive bonds, the authority may issue interim certificates, or other temporary obligations to the purchaser of such bonds. Such interim certificates, or other temporary obligations, shall be in such form, contain such terms, conditions and provisions, bear such date or dates, and evidence such agreements relating to their discharge or payment or the delivery of definitive bonds as the authority may by resolution, trust indenture or mortgage determine.

In case any of the officers whose signatures appear on any bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if they had remained in office until such delivery.

The authority shall have power out of any funds available therefor to purchase any bonds issued by it at a price not more than the principal amount thereof and the accrued interest; provided, however, that bonds payable exclusively from the revenues of a designated project or projects shall be purchased out of any such revenues available therefor. All bonds so purchased shall be canceled. This paragraph shall not apply to the redemption of bonds.

Any provision of any law to the contrary notwithstanding, any bonds, interim certificates, or other obligations issued pursuant to this act shall be fully negotiable.

History: En. Sec. 15, Ch. 140, L. 1935; amd. Sec. 37, Ch. 234, L. 1971.

Amendments

The 1971 amendment deleted "not exceeding six per centum (6%) per annum

payable semiannually" after "bear interest at such rate or rates" near the middle of the first paragraph; deleted the proviso to the second sentence of the second paragraph; and made a minor change in style.

35-128. (5309.27A) Notice, hearing and creation of authority for a county. (1) to (5) * * * [Same as parent volume.]

(6) The area of operation of such authority shall include said county, but in no event shall it include any city unless a resolution shall have been adopted by the governing body of the city (and by any authority which shall have been theretofore established and authorized to exercise its powers in the city) declaring that there is need for the county authority to exercise its powers within that city; provided, however, that such resolution shall not be effective until it has been approved by a majority vote of the electors within the corporate limits of such city or town voting either at a special or general election. If, after the adoption

of such resolution or resolutions, an authority is established for any city within the county, the county authority shall have no power to initiate any further housing projects within such city without the consent, by resolution, of the governing body thereof and of the authority established for such city.

If the board of county commissioners, after a hearing as aforesaid, shall determine that neither of the above enumerated conditions exist, it shall adopt a resolution denying the petition. After three (3) months shall have expired from the date of the denial of any such petitions, subsequent petitions may be filed as aforesaid and new hearings and determinations made thereon.

(7) * * * [Same as parent volume.]

History: En. Sec. 5, Ch. 153, L. 1941;
amd. Sec. 1, Ch. 281, L. 1971.

Amendments

The 1971 amendment rewrote the first paragraph of subsection (6). For prior text, see parent volume.

35-129. Commissioners and powers of authority for a county. The commissioners of a housing authority created for a county may be appointed and removed by the board of county commissioners of the county in the same manner as the commissioners of a housing authority created for a city may be appointed and removed by the mayor, and except as otherwise provided herein, each housing authority created for a county and the commissioners thereof shall have the same functions, rights, powers, duties and limitations provided for housing authorities created for cities and the commissioners of such housing authorities; provided, that for such purposes the term "mayor" or "council" as used in the housing authorities law and any amendments thereto shall be construed as meaning "board of county commissioners," the term "city clerk" as used therein shall be construed as meaning "county clerk," the term "city" as used therein shall be construed as meaning "county" and the term "ordinance" shall be construed as meaning "resolution" unless a different meaning clearly appears from the context.

History: En. Sec. 5, Ch. 153, L. 1941;
amd. Sec. 2, Ch. 281, L. 1971; amd. Sec. 2,
Ch. 259, L. 1974.

Amendments

The 1971 amendment inserted "and the term 'ordinance' shall be construed as meaning 'resolution'" in the first proviso; added the second proviso; and made a minor change in punctuation.

The 1974 amendment deleted a final

proviso making the last paragraph of section 35-109 (deleted by 1974 amendment) inapplicable to projects by a county housing authority outside city limits.

Effective Date

Section 3 of Ch. 281, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 10, 1971.

35-145. (5309.36) Home owners' loan corporation bonds as security for deposit of public funds. Subject to rules prescribed by the department of community affairs, the bonds and other obligations herein made eligible for investment, may be used as security for all deposit of public funds or obligations for which depository bonds or any kind of bonds or other securities are required, or may by law be deposited as security.

History: En. Sec. 2, Ch. 5, Ex. L. 1933;
amd. Sec. 2, Ch. 37, L. 1935; amd. Sec.
109, Ch. 431, L. 1975.

Amendments

The 1975 amendment substituted "department of community affairs" for "superintendent of banks"; and made minor changes in phraseology.

CHAPTER 4—EMERGENCY WAR AND VETERANS' HOUSING FACILITIES

Section 35-409. Definitions.

35-409. Definitions. The following terms, whenever used or referred to in this act, shall have the following respective meanings, unless a different meaning clearly appears from the context:

(1) to (3) * * * [Same as parent volume.]

(4) "Families of servicemen" includes, in so far as permitted by federal law, the families of any person who is serving in the military or naval forces of the United States, and the unmarried surviving spouse of a deceased veteran.

(5) * * * [Same as parent volume.]

History: En. Sec. 2, Ch. 9, L. 1955;
amd. Sec. 15, Ch. 535, L. 1975.

Amendments

The 1975 amendment substituted "unmarried surviving spouse" for "unmarried widow" in subdivision (4).

CHAPTER 5—HOUSING ACT OF 1975

- Section 35-501. Title.
35-502. Legislative declaration.
35-503. Definitions.
35-504. General powers of the board.
35-505. Financing programs of the board.
35-506. Procedure prior to financing of housing developments.
35-507. Supervision of housing sponsors.
35-508. Bonds and notes.
35-509. Provision of bond resolutions.
35-510. Validity of pledge.
35-511. Personal liability.
35-512. Purchase of notes and bonds—cancellation.
35-513. Trust indenture.
35-514. Negotiability of bonds.
35-515. Signatures of board members.
35-516. Reserve funds and appropriations.
35-517. Maintenance of capital reserve account.
35-518. Refunding obligations—issuance.
35-519. Refunding obligations—sale.
35-520. Credit of state not pledged.
35-521. Annual audit.
35-522. Tax exemption of bonds.
35-523. Accounts of the board.
35-524. Pledge against impairment of contracts.
35-525. Meetings and acts of the board.
35-526. Powers of the department of community affairs.

35-501. Title. This act shall be known and may be cited as the "Housing Act of 1975."

History: En. Sec. 35-501 by Sec. 1, Ch. 461, L. 1975.

Title of Act

An act to be known as the Housing Act

of 1975; creating a board of housing and providing for its powers and duties relating to financing to assist private enterprise and governmental agencies to meet housing needs.

35-502. Legislative declaration. The legislature finds and declares that there is a shortage in Montana of decent, safe, and sanitary housing which is within the financial capabilities of lower income persons and families. In order to alleviate the high cost of housing for these persons, the legislature believes that it is essential that additional public moneys be made available, through the issuance of revenue bonds, to assist both private enterprise and governmental agencies in meeting critical housing needs.

History: En. 35-502 by Sec. 2, Ch. 461, L. 1975.

35-503. Definitions. As used in this act, unless the context requires otherwise:

(1) "Board" means the board of housing created in 82A-224.

(2) "Bond" means any bonds, notes, debentures, interim certificates, or other evidences of financial indebtedness issued by the board pursuant to this act.

(3) "Capital reserve account" means the capital reserve account provided for in 35-523.

(4) "Department" means the department of administration provided for in Title 82A, chapter 2.

(5) "Federally insured mortgage" means a mortgage loan for land development or residential housing insured or guaranteed by the United States or a governmental agency or instrumentality thereof, or a commitment by the United States or a governmental agency or instrumentalities thereof to insure such a mortgage.

(6) "Federally insured security" means an evidence of indebtedness insured or guaranteed as to repayment of principal and interest by the United States or an instrumentality thereof.

(7) "Governmental agency" means any department, division, public corporation, public agency, political subdivision, or other public instrumentality of the state, the federal government, any other state or public agency, or any two or more thereof.

(8) "Housing development" means any work or undertaking financed, in whole or in part, under this act for the primary purpose of acquiring, constructing or rehabilitating dwelling accommodations for persons or families of lower income in need of housing. An undertaking may include any buildings, land, equipment, facilities, or other real or personal properties which are necessary, convenient, or desirable in connection therewith, including but not limited to streets, sewers, utilities, parks, site preparation, landscaping, and other nonhousing facilities as the board determines to be necessary, convenient, or desirable.

(9) "Housing development costs" means the sum total of all costs

incurred in a housing development approved by the board as reasonable and necessary, including, but not limited to:

(a) cost of land acquisition and any buildings thereon, including payments for options, deposits, or contracts to purchase properties on the proposed housing development site or payments for the purchase of properties;

(b) cost of site preparation, demolition and clearing;

(c) architectural, engineering, legal, accounting, corporation, and other fees paid or payable in connection with the planning, execution and financing of the housing development and the finding of an eligible mortgagee or mortgagees for the housing development;

(d) cost of necessary studies, surveys, plans, and permits;

(e) insurance, interest, financing, tax and assessment costs and other operating and carrying costs during construction;

(f) cost of construction, rehabilitation, reconstruction, fixtures, furnishings, equipment, machinery, apparatus and similar facilities related to the real property;

(g) cost of land improvements including landscaping and offsite improvements, whether or not the costs have been paid in cash or in a form other than cash;

(h) necessary expenses in connection with initial occupancy of the housing development;

(i) a reasonable profit and risk fee in addition to job overhead to the general contractor and if applicable, a limited profit housing sponsor;

(j) an allowance established by the board for working capital and contingency reserves, and reserves for any anticipated operating deficits during construction and initial occupancy;

(k) costs of other items, including tenant relocation, as the board determines to be reasonable and necessary for the housing development, less any and all net rents and other net revenues received from the operation of the real and personal property on the development site during the construction.

(10) "Housing sponsor" means individuals, joint ventures, partnerships, limited partnerships, trusts, firms, associations, corporations, governmental agencies, limited-profit housing sponsor, nonprofit corporation, or other legal entities or any combination thereof, that are:

(a) approved by the board;

(b) qualified either to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing development;

(c) subject to the rules of the board and other terms and conditions set forth in this act.

(11) "Lending institution" means any public or private entity or governmental agency, approved by the board, maintaining an office in this state and authorized by law to make or participate in making residential mortgages in the state.

(12) "Limited-profit housing sponsor" means a corporation, trust, partnership, association, other entity, or an individual restricted as to distribution of income and regulated as to rents, charges, rate of re-

turn, and methods of operation as the board determines necessary to carry out this act.

(13) "Mortgage" means a mortgage deed, deed of trust, or other instrument which shall constitute a valid lien on real property in fee simple or on a leasehold under a lease having a remaining term at the time the mortgage is acquired, which does not expire for at least that number of years beyond the maturity date of the obligation secured by the mortgage established by the board as necessary to protect its interest as mortgagee.

(14) "Mortgage loan" means an interest bearing obligation secured by a mortgage on land and improvements in the state.

(15) "Nonprofit housing sponsor" means a housing cooperative formed under Title 14, chapter 2, or a nonprofit corporation formed under Title 15, chapter 23, restricted as to distribution of income and regulated as to rents, charges, rate of return and methods of operation as the board determines necessary, and whose articles of incorporation provide, in addition that:

(a) the organization has been organized exclusively to provide housing developments for persons and families of lower income;

(b) all the income and earnings of the organization shall be used exclusively for housing development purposes and no part of the net income or net earnings of the organization shall inure to the benefit or profit of any private individual, firm, corporation, partnership, or association;

(c) the organization is in no manner controlled or under the direction or acting in the substantial interest of any private individual, firm, partnership, or association seeking to derive profit or gain therefrom, or seeking to eliminate or minimize losses in any transactions therewith, except that the limitations shall apply to members of a cooperative only to the extent provided by rules of the board;

(d) the operations of the organization may be supervised by the board and the organization will enter into agreements with the board to regulate planning, development, and management of any housing development undertaken by the organization and the disposition of the property or other interests of the organization.

(16) "Persons and families of lower income" means persons and families, with insufficient personal or family income who require assistance under this act, as determined by the board, taking into consideration:

(a) the amount of the total personal and family income available for housing needs;

(b) the size of the family;

(c) the eligibility of persons and families under federal housing assistance of any type based on lower income or a functional or physical disability;

(d) the ability of persons and families to compete successfully in the normal housing market and to pay the amount at which private enterprise is providing decent, safe, and sanitary housing;

(e) the availability and cost of housing in particular areas; and

(f) needs of particular persons or families due to age or physical handicaps.

(17) "Rehabilitation" means the repair, reconstruction, or improvement of an existing structure to provide decent, safe and sanitary housing or to conform housing with state or local health, building, fire prevention, and safety codes as determined by the board.

History: En. 35-503 by Sec. 3, Ch. 461, L. 1975; amd. Sec. 1, Ch. 163, L. 1977. for a reference to 82A-907; substituted "department of administration" in subdivision (4) for "department of community affairs"; and made minor changes in punctuation and style.

Amendments

The 1977 amendment substituted the reference to 82A-224 in subdivision (1)

35-504. General powers of the board. The board may:

- (1) sue and be sued;
- (2) have a seal;
- (3) adopt all procedural and substantive rules necessary for the administration of this act, including rules concerning its mortgage, construction, and temporary lending programs;
- (4) make contracts, agreements and other instruments necessary or convenient for the exercise of its powers under this act;
- (5) enter into agreements or other transactions with any federal, state, or local governmental agency, any persons and any domestic or foreign partnership, corporation, association, or organization in carrying out this act;
- (6) enter into agreements under its rules with sponsors, mortgagors, or lending institutions for the purpose of regulating the analysis, planning, development and management of housing developments, financed in whole or in part, by the proceeds of its loans or securities and mortgage purchase programs;
- (7) enter into agreements or other transactions with, and accept grants and the co-operation of, any governmental agency in furtherance of this act, including but not limited to the development, leasing, maintenance, operation, and financing of any housing development;
- (8) accept services, appropriations, gifts, grants, bequests, and devises, and utilize or dispose of them in carrying out this act;
- (9) acquire real or personal property or any right, interest or easement therein, by gift, purchase, transfer, foreclosure, lease or otherwise; hold, sell, assign, lease, encumber, mortgage or otherwise dispose thereof; hold, sell, assign or otherwise dispose of any mortgage or loan owned by it or in its control or custody; release or relinquish any right, title, claim, interest, easement, or demand, however acquired, including any equity or right of redemption; do any of the foregoing by public or private sale, with or without public bidding; commence any action to protect or enforce any right conferred upon it by any law, mortgage, contract or other agreement; bid for and purchase property at any foreclosure or other sale, or acquire or take possession of it in lieu of foreclosure; and operate, manage, lease, dispose of, and otherwise deal with such property, in any manner necessary or desirable to protect its interests and the holders of its bonds or notes, and consistent with any agreement with such holders;

(10) service and contract and pay for the servicing of loans;

(11) provide general technical services in the analysis, planning, design, processing, construction, rehabilitation, and management of housing developments for persons and families of lower income, where these services are not otherwise available;

(12) provide general consultative services to housing developments for persons and families of lower income and the residents thereof with respect to counseling and training in management, home ownership and maintenance, where these services are not otherwise available;

(13) invest any funds not required for immediate use, subject to any agreements with its bondholders and noteholders, as provided in Title 79, chapter 3, R. C. M. 1947, except all investment income from funds of the board, less the cost for investment as prescribed by law, shall be deposited in the housing finance account;

(14) sell its loans or securities to the federal national mortgage association or any other agency or instrumentality of the United States, and may invest in the capital stock issued by the association or other agency or instrumentality to the extent, if any, required as a condition of such sale;

(15) consent, whenever it deems it necessary or desirable in fulfilling its purposes to the modification of the rate of interest, time and payment of any installment of principal or interest, security, or any other term of any contract, mortgage, mortgage loan, mortgage loan commitment, construction loan, advance contract or agreement of any kind, subject to any agreement with bondholders and noteholders;

(16) collect reasonable interest, fees and charges in connection with making and servicing its loans, notes, bonds, commitments, and other evidences of indebtedness, and in connection with providing technical, consultative and project assistance services. Interest fees and charges shall be limited to the amounts required to pay the costs of the board, including operating and administrative expenses and reasonable allowances for losses which may be incurred;

(17) procure insurance against any loss in connection with its mortgages and mortgage loans, and other assets or property in amounts and from insurers as the board considers desirable or necessary;

(18) act as agent for governmental agencies concerning acquisition, construction, leasing, operation, or management of a housing development;

(19) issue notes and bonds, and replace lost, destroyed or mutilated notes and bonds; and

(20) develop special programs for housing developments for veterans of the armed forces of the United States who are unable to acquire safe and sanitary housing through lending institutions by conventional means.

History: En. 35-504 by Sec. 5, Ch. 461,
L. 1975.

35-505. Financing programs of the board. (1) The board may:

(a) make loans to lending institutions under terms and conditions adopted by the board requiring the proceeds to be used by the lending in-

stitution for the making of mortgage loans for housing developments in the state for persons and families of lower income ;

(b) invest in, purchase or make commitments to purchase, and take assignments from lending institutions, of notes, mortgages and other securities evidencing loans for the construction, rehabilitation, purchase, leasing or refinancing of housing developments for persons and families of lower income in this state, under terms and conditions adopted by the board ;

(c) make, undertake commitments to make, and participate in the making of mortgage loans, including federally insured mortgage loans, and to make temporary loans and advances in anticipation of permanent mortgage loans to housing sponsors to finance the construction or rehabilitation of housing developments designed and planned for occupancy by persons and families of lower income in this state, under terms and conditions adopted by the board ;

(d) make, undertake commitments to make, and participate in the making of loans to persons and families of lower income for housing development, including without limitation persons and families of lower income who are eligible or potentially eligible for federally insured loans, federal mortgages or other federal housing assistance, when the board determines that mortgage loans are not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions, and under terms and conditions adopted by the board.

(2) The board shall adopt rules respecting the regulation of borrowers, the admission of occupants in housing developments, the construction of ancillary facilities, and requirements or restrictions necessary to implement this act.

(3) The board shall adopt rules for the :

(a) organization, approval, standards, and regulation of housing sponsors and eligible recipients ;

(b) approval, standards and regulation of lending institutions under this act ;

(c) assessment, collection and payment of all fees and charges in connection with making, purchasing, and servicing of its bonds and notes, mortgage lending, construction lending, temporary lending, and security purchase programs ;

(d) assessment and collection of fees and charges in connection with its technical, consultative, and project assistance activities ;

(e) determination and regulation of mortgagor and lending institution and their use of funds under this chapter, sponsor and mortgagor equity definitions and limitations, and housing development costs ;

(f) percentage of housing units or housing developments assisted under this act that are reserved for lower income persons and families, and which allows for an economic mixture of residents.

(4) The board may require that loans made to or securities issued by lending institutions shall be additionally secured as to payment of principal and interest by a pledge of and a lien upon collateral security in

amounts and consisting of obligations and securities as the board determines necessary to assure prompt payment of loans and interest. Collateral may be required to be lodged with a bank or trust company designated by the board as custodian, or the board may enter into an agreement with the lending institution requiring it to identify and maintain and service the collateral and the income therefrom solely in accordance with the agreement. A copy of each agreement and any revisions or supplements thereto shall be filed with the secretary of state, and no further filing or other action under the Uniform Commercial Code or any other law shall be required to perfect the security interest of the board in the collateral or in any additions or substitutions. The lien and trust is binding from the time it is made, against all parties having claims of any kind in tort, contract, or otherwise against the lending institution.

History: En. 35-505 by Sec. 6, Ch. 461, L. 1975.

35-506. Procedure prior to financing of housing developments. The board may finance housing developments under this act only when the board finds: (1) that there exists a shortage of decent, safe, and sanitary housing at rentals or prices which persons and families of lower income can afford within the general housing market area to be served by the proposed housing development;

(2) that private enterprise has not provided an adequate supply of decent, safe, and sanitary housing in the housing market area at rentals or prices which persons or families of lower income can afford, or provided sufficient mortgage financing for housing developments for occupancy by persons or families of lower income;

(3) that the housing sponsor undertaking the proposed housing development in this state will supply well planned, well designed housing and that such sponsors are financially responsible;

(4) that the housing development to be assisted under this act will be of public use and will provide a public benefit, taking into account the existence of local government comprehensive plans, housing and land-use plans and regulations, areawide plans, and other public desires;

(5) that the housing development does not involve the construction of second homes. For purposes of this paragraph, "second home" means a home which would not qualify as the primary residence of the taxpayer for federal income tax purposes relating to capital gains on the sale or exchange of residential property; and

(6) that as to direct loans it is necessary to qualify for federal funds.

History: En. 35-506 by Sec. 7, Ch. 461, L. 1975.

35-507. Supervision of housing sponsors. (1) The board may supervise housing sponsors of housing developments financed under this act as follows:

(a) prescribe uniform systems of accounts and records for housing sponsors and require them to make reports and give answers to specific questions on forms and at times specified by the board;

(b) enter upon and inspect the housing development, and examine all books and records of the housing sponsor with respect to capitalization, income and other matters as specified by the board;

(c) supervise the operation and maintenance of any housing development and order repairs necessary to protect the public and the board's interest or the health, welfare, or safety of the occupants;

(d) determine standards for, and control resident selection by a housing sponsor;

(e) require any housing sponsor to pay to the board fees as it prescribes in connection with the examination, inspection, supervision, auditing, or other regulation of the housing sponsor;

(f) order any housing sponsor to do, or to refrain from doing, things necessary to comply with the provisions of law, the rules of the board, and the terms of any contract or agreement to which the housing sponsor is a party;

(g) regulate the retirement of any capital investment or the redemption of stock where any such retirement or redemption when added to any dividend or other distribution shall exceed in any one fiscal year ten per cent (10%), or a lesser amount of the original face amount of any investment or equity of any housing sponsor, as determined by the board; and

(h) adopt rules specifying the categories of cost which shall be allowable in the construction or rehabilitation of a housing development.

(2) The board shall require any housing sponsor to certify the actual housing development costs prior to periodic payments or upon completion of the housing development, subject to audit and determination by the board. The board may accept, in lieu of any certification of housing development costs, other assurances of the housing development costs, in any form or manner whatsoever, as will enable the board to determine with reasonable accuracy the amount of housing development costs.

History: En. 35-507 by Sec. 8, Ch. 461, L. 1975.

35-508. Bonds and notes. (1) The board may by resolution, from time to time, issue negotiable notes and bonds in a principal amount as the board determines necessary to provide sufficient funds for achieving any of its purposes, including the payment of interest on notes and bonds of the board, establishment of reserves to secure the notes and bonds, including the reserve funds created under section 35-516 and all other expenditures of the board incident to, and necessary or convenient to carry out this act.

(2) The board may by resolution, from time to time, issue notes to renew notes and bonds to pay notes, including interest, and whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and to issue bonds partly to refund bonds outstanding and partly for any of its other purposes.

(3) Except as otherwise expressly provided by resolution of the board, every issue of its notes and bonds shall be obligations of the board payable out of any revenues, assets, or moneys of the board, subject only to agreements with the holders of particular notes or bonds pledging particular revenues, assets or moneys.

(4) The notes and bonds shall be authorized by resolutions of the board, shall bear a date and shall mature at times as the resolutions provide. A note shall not mature more than ten (10) years and a bond shall not mature more than fifty (50) years from the date of its issue. The bonds may be issued as serial bonds payable in annual installments or as term bonds or as a combination thereof. The notes and bonds shall bear interest at a rate, or rates, be in denominations, be in a form, either coupon or registered, carry registration privileges, be executed in a manner, be payable in a medium of payment, at places within or without the state, and be subject to terms of redemption as provided in resolutions. The notes and bonds of the board may be sold at public or private sale, at prices determined by the board.

(5) The total amount of notes and bonds outstanding at any one time may not exceed seventy-five million dollars (\$75,000,000). The maximum rate of interest on bonds issued by the board may not exceed the maximum rate for revenue bonds issued by political subdivisions as provided in section 79-2602. The notes and bonds may not be sold for less than par.

History: En. 35-508 by Sec. 9, Ch. 461,
L. 1975.

35-509. Provision of bond resolutions. A resolution authorizing any notes, or bonds, or any issue thereof, may contain provisions, which shall be a part of the contract or contracts with the holders thereof, as to:

(1) pledging all or any part of the revenues or property of the board to secure the payment of the notes or bonds, or of any issue thereof, subject to existing agreements with noteholders or bondholders;

(2) pledging all or any part of the assets of the board, including mortgages and obligations securing them, to secure the payment of the notes or bonds, or of any issue thereof, subject to existing agreements with noteholders or bondholders;

(3) the use and disposition of the gross income from mortgages owned by the board and payment of principal of mortgages owned by the board;

(4) the setting aside of reserves of sinking funds in the hands of trustees, paying agents, and other depositories, and the regulation and disposition thereof;

(5) limitations on the purpose to which the proceeds of sale of notes or bonds may be applied and the pledge of the proceeds to secure the payment of the notes or bonds or of any issue thereof;

(6) limitations on the issuance of additional notes or bonds, the terms upon which additional notes or bonds may be issued and secured, and the refunding of outstanding notes or bonds;

(7) the procedure, if any, by which the terms of any contract with noteholders or bondholders may be amended or abrogated, the amount

of notes or bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(8) limitations on the amount of moneys to be expended by the board for operating expenses of the board;

(9) vesting in a trustee property, rights, powers, and duties in trust as the board determines;

(10) defining the acts or omissions to act which shall constitute a default in the obligations and duties of the board to the holders of the notes or bonds, and providing for the rights and remedies of the holders of the notes or bonds in the event of such default, including as a matter of right the appointment of a receiver. Rights and remedies shall not be inconsistent with the laws of the state and the other provisions of this act; and

(11) any other matters, of like or different character, which in any way affect the security or protection of the holders of the notes or bonds.

History: En. 35-509 by Sec. 10, Ch. 461, L. 1975.

35-510. Validity of pledge. Any pledge made by the board shall be valid and binding from the time the pledge is made. The revenues, moneys or property pledged and thereafter received by the board shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of any pledge shall be valid and binding against all parties having claims of any kind in tort, contract or otherwise against the board, irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

History: En. 35-510 by Sec. 11, Ch. 461, L. 1975.

35-511. Personal liability. The board members and employees of the department are not personally liable or accountable by reason of the issuance of, or on any bond or note issued by the board.

History: En. 35-511 by Sec. 12, Ch. 461, L. 1975.

35-512. Purchase of notes and bonds—cancellation. The board, subject to existing agreements with noteholders or bondholders, may, out of any funds available for that reason, purchase notes or bonds of the board, which shall thereupon be canceled, at a price not exceeding:

(a) the current redemption price plus accrued interest to the next interest payment thereon, if the notes or bonds are then redeemable; or

(b) the redemption price applicable on the first date after the purchase upon which the notes or bonds become subject to redemption plus accrued interest to that date, of the notes or bonds are not then redeemable.

History: En. 35-512 by Sec. 13, Ch. 461, L. 1975.

35-513. Trust indenture. In the discretion of the board, the bonds may be secured by a trust indenture between the board and a corporate trustee, which may be a trust company or bank having the power of a trust company within or without the state. A trust indenture may contain provisions for protecting and enforcing the rights and remedies of the bondholders as are reasonable and proper and not in violation of law, including covenants setting forth the duties of the board in relation to the exercise of its powers, the custody, safeguarding and application of all moneys. The board may provide by a trust indenture for the payment of the proceeds of the bonds and the revenues to the trustee under the trust indenture of another depository, and for the method of disbursement, with safeguards and restrictions as it determines. All expenditures incurred in carrying out a trust indenture may be treated as part of the operating expenditures of the board.

History: En. 35-513 by Sec. 14, Ch. 461, L. 1975.

35-514. Negotiability of bonds. Notes and bonds issued by the board are negotiable instruments under the Uniform Commercial Code, subject only to the provisions for registration of notes and bonds.

History: En. 35-514 by Sec. 15, Ch. 461, L. 1975.

35-515. Signatures of board members. In case any of the board members, whose signatures appear on notes or bonds or coupons, cease to be members before the delivery of the notes or bonds, their signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if the members had remained in office until delivery.

History: En. 35-515 by Sec. 16, Ch. 461, L. 1975.

35-516. Reserve funds and appropriations. (1) The board shall pay into the capital reserve account:

(a) any funds appropriated and made available by the state for the purpose of the account;

(b) any proceeds of sale of notes or bonds to the extent provided in the resolutions or indentures of the board authorizing their issuance; and

(c) any other funds which may be available to the board for the purpose of the account from any other source.

(2) All funds held in the capital reserve account shall be used solely for the payment of the principal of bonds secured in whole or in part by the account or of the sinking fund payments with respect to the bonds, the purchase or redemption of the bonds, the payment of interest on the bonds or the payment of any redemption premium required to be paid when the bonds are redeemed prior to maturity. Funds in the account shall not be withdrawn at any time in an amount which reduces the amount of the account to less than the sum of minimum capital reserve requirements established for the account, except for the purpose of making, with respect to bonds secured in whole or in part by the account, payment, when due,

of principal, interest, redemption premiums, and sinking fund payments for the payment of which other moneys pledged are not available. Any income or interest earned by, or incremental to, the capital reserve account due to its investment may be transferred to other accounts of the board to the extent it does not reduce the amount of the capital reserve account below the sum of minimum capital reserve requirements for the account.

(3) The board may not issue bonds secured in whole or in part by the capital reserve account, unless the board deposits in the account, from the proceeds of the bonds issued or from any other sources, an amount not less than the minimum capital reserve requirement for these bonds. For the purposes of this section, the term "minimum capital reserve requirement" means, as of any particular date of computation, an amount of money, as provided in the resolution or indenture of the board authorizing the bonds or notes, equal to not more than the greatest of the respective amounts for the current or any future fiscal year of the board of annual debt service on the bonds of the board secured in whole or in part by the account. The annual debt service for any fiscal year is the amount of money equal to the aggregate of all interest and principal payable on the bonds during the fiscal year, calculated on the assumption that all the bonds are paid at maturity. If any amount of the bonds is required to be redeemed on an earlier date by the operation of a sinking fund, then that amount is considered payable on those bonds during the year they are to be redeemed for the purposes of this calculation.

(4) In computing the amount of the capital reserve account, securities in which all or a portion of the account shall be invested shall be valued at par, or if purchased at less than par, at their cost to the board.

History: En. 35-516 by Sec. 17, Ch. 461, L. 1975.

35-517. Maintenance of capital reserve account. (1) In order to assure the maintenance of the capital reserve account, the chairman of the board shall on or before September 1 in the year preceding the convening of the legislature, deliver to the governor a certificate stating the sum, if any, required to restore the capital reserve account to the minimum capital reserve requirement. The governor shall include in the executive budget submitted to the legislature, the sum required to restore the capital reserve account to the sum of minimum capital reserve requirements. All sums appropriated by the legislature shall be deposited in the capital reserve account.

(2) All amounts appropriated to the board by the legislature under this section constitute advances to the board and, subject to the rights of the holders of any bonds or notes of the board, shall be repaid to the state's general fund without interest from available operating revenues of the board in excess of amounts required for the payment of bonds, notes or other obligations of the board, for maintenance of the capital reserve account and for operating expenses.

History: En. 35-517 by Sec. 18, Ch. 461, L. 1975.

35-518. Refunding obligations—issuance. The board may provide for the issuance of refunding obligations for refunding any obligations then outstanding which have been issued under this chapter, including the payment of any redemption premium and any interest accrued or to accrue to the date of redemption of the obligations. The issuance of obligations, the maturities and other details, the rights of the holders, and the rights, duties and obligations of the board are governed by the appropriate provisions of this act which relate to the issuance of obligations.

History: En. 35-518 by Sec. 19, Ch. 461, L. 1975.

35-519. Refunding obligations—sale. Refunding obligations issued as provided in section 35-518 may be sold or exchanged for outstanding obligations issued under this chapter. The proceeds may be applied to the purchase, redemption, or payment of outstanding obligations. Pending the application of the proceeds of refunding obligations, with other available funds, to the payment of principal, accrued interest and any redemption premium on the obligations being refunded, and, if permitted in the resolution authorizing the issuance of the refunding obligations or in the trust agreement securing them, to the payment of interest on refunding obligations and expenses in connection with refunding, the proceeds may be invested as provided in Title 79, chapter 3, R. C. M. 1947.

History: En. 35-519 by Sec. 20, Ch. 461, L. 1975.

35-520. Credit of state not pledged. Obligations issued under the provisions of this act do not constitute a debt or liability or obligation or a pledge of the faith and credit of the state but are payable solely from the revenues or assets of the board. An obligation issued under this act shall contain on the face thereof a statement to the effect that the state of Montana is not liable on the obligation and the obligation is not a debt of the state and neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal of, or the interest on, the obligation.

History: En. 35-520 by Sec. 21, Ch. 461, L. 1975.

35-521. Annual audit. (1) There shall be an audit of the board's books and records at least once each fiscal year.

(2) The legislative auditor may conduct an audit at the request of the legislative audit committee.

History: En. 35-521 by Sec. 22, Ch. 461, L. 1975.

35-522. Tax exemption of bonds. Bonds, notes or other obligations issued by the board under this act, or by local housing authorities under Title 35, chapter 1, their transfer, and their income (including any profits made on their sale), shall be free from taxation by the state or any political subdivision or other instrumentality of the state, excepting inheritance, es-

tate and gift taxes. The board is not required to pay recording or transfer fees or taxes on instruments recorded by it.

History: En. 35-522 by Sec. 23, Ch. 461, L. 1975.

35-523. Accounts of the board. (1) Housing finance account:

(a) there is a housing finance account in the bonds proceeds and insurance clearance fund provided for in section 79-410(6), R. C. M. 1947;

(b) all funds from the proceeds of bonds issued under this act, fees, and other moneys received by the board, moneys appropriated by the legislature for the use of the board in carrying out this act, and moneys made available from any other source for the use of the board shall be deposited in the housing finance account except where otherwise provided by law and except as necessary to maintain the capital reserve and revolving accounts;

(c) all funds deposited in the housing finance account are continuously appropriated to and may be expended by the board for the purposes authorized in this act.

(2) Capital reserve account:

(a) there is a capital reserve account in the sinking fund provided for in section 79-410(3), R. C. M. 1947;

(b) the capital reserve account consists of the aggregate of moneys retained by the board, under existing agreements with bondholders, as the minimum capital reserve requirement described in section 35-516 for each bond issue sold by the board.

(3) Revolving account:

(a) there is a revolving account in the revolving fund provided for in section 79-410(7), R. C. M. 1947;

(b) funds appropriated by the legislature for use of the board in payment of expenses incurred in carrying out this act shall be deposited in the revolving account;

(c) funds expended by the board under this subsection shall be repaid by the board into the revolving account from the fees and charges collected under this act and from any other moneys available for such repayment in accordance with this act.

History: En. 35-523 by Sec. 24, Ch. 461, L. 1975.

35-524. Pledge against impairment of contracts. In accordance with the constitutions of the United States and the state of Montana the state pledges that it will not, in any way, impair the obligations of any agreement between the board and the holders of notes and bonds issued by the board.

History: En. 35-524 by Sec. 25, Ch. 461, L. 1975.

35-525. Meetings and acts of the board. (1) All meetings of the board are open to the public.

(2) All official acts of the board shall be in a regular or special meeting and by a majority of the board.

(3) All rules adopted by the board shall be in accordance with the Administrative Procedure Act.

History: En. 35-525 by Sec. 26, Ch. 461, L. 1975.

35-526. Powers of the department of community affairs. The department may:

(1) survey and investigate housing needs throughout the state and publish the results, and make recommendations to the governor and the legislature as to legislation and other measures necessary, desirable, or advisable to alleviate housing problems;

(2) maintain and disseminate information on available governmental housing assistance programs, eligibility and development requirements, and other similar information; and

(3) promote research and development in housing planning design, production, conservation, rehabilitation, and other matters relating to, or affecting the provision of decent, safe and sanitary housing in a suitable living environment.

History: En. 35-526 by Sec. 27, Ch. 461, L. 1975; amd. Sec. 3, Ch. 163, L. 1977.

Amendments

The 1977 amendment made no change in the text of this section.

parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Separability Clause

Section 28 of Ch. 461, Laws 1975 read "If a part of this act is invalid, all valid

Repealing Clause

Section 4 of Ch. 163, Laws 1977 read "Section 82A-907, R. C. M. 1947, is repealed."

CHAPTER 6—WEATHERIZATION PROGRAMS

Section 35-601. Weatherization moneys consolidated.

35-602. Allocation formula.

35-603. Annual allocation.

35-601. Weatherization moneys consolidated. All federal funds and grants available and becoming eligible to Montana under the provisions of the community services administration's emergency energy conservation program, the federal energy administration's low-income weatherization assistance program, and any other federal funds intended to increase the energy efficiency of dwellings occupied by persons of low and fixed incomes, except for Title XX of the Social Security Act are to be coordinated and are appropriated to the department of community affairs.

History: En. 35-601 by Sec. 2, Ch. 583, L. 1977.

Title of Act

An act to expand the existing weatherization program administered by the department of community affairs.

Appropriation

Section 1 of Ch. 583, Laws 1977 read "There is appropriated \$300,000 from the interest earnings generated by the coal tax trust fund established under section 84-1319(1) to the department of community affairs for the biennium ending June 30, 1979, for the purpose of expanding the state's weatherization program."

35-602. Allocation formula. (1) The department of community affairs may use not more than 5% of the total weatherization funds for administration of the weatherization program.

(2) The combined state and federal weatherization moneys shall be allocated to local weatherization programs according to the following formula:

(a) 50% of the remaining money shall be disbursed for the purpose of weatherization as follows: each of the governor's substate planning districts shall receive that fraction of money disbursed under this subsection as the number of eligible households of the local area bears to the total number of eligible households in the state:

(b) 50% of the remaining money shall be disbursed as follows: each of the Governor's substate planning districts shall receive that fraction of money disbursed under this subsection as the local effort as measured by financial assistance and in-kind services per eligible household bears to the cumulative state total of local government effort per eligible household.

History: En. 35-602 by Sec. 3, Ch. 583,
L. 1977.

35-603. Annual allocation. State and federal weatherization funds shall be allocated to local weatherization programs on an annual basis.

History: En. 35-603 by Sec. 4, Ch. 583,
L. 1977.

TITLE 36—HUSBAND AND WIFE

- Chapter 1. Husband and wife—mutual obligations, powers and property rights, 36-103, 36-111 to 36-120, 36-127 to 36-129.
2. Conciliation law, 36-201 to 36-205.

CHAPTER 1—HUSBAND AND WIFE—MUTUAL OBLIGATIONS, POWERS AND PROPERTY RIGHTS

- Section 36-103. Duties of husband and wife as to support.
36-111. Individual property of married person.
36-112. Inventory of individual personal property of married person.
36-113. Effect of filing inventory.
36-114. Earnings and accumulations of married person.
36-115. Same, when separated.
36-116. Work and labor of married person.
36-117. Debts of spouse contracted before marriage.
36-118. Individual property of married person—how far liable.
36-118.1. Necessity determined by standard of living.
36-119. Support of spouse.
36-120. Married person not liable when abandoned by spouse.
36-127. Married person may act as personal representative, guardian, conservator, or trustee.
36-128. May sue and be sued.
36-129. Liable for own contracts.

36-101. (5782) Mutual obligations of husband and wife.

Cross-Reference

Cause of action for alienation of affections abolished, sec. 17-1201.

Action for Loss of Consortium

A wife can maintain an action for loss of consortium when such loss is the result of negligent injury to her husband. *Duffy v. Lipsman-Fulkerson & Co.*, 200 F Supp 71, 73; *Dutton v. Hightower & Lubrecht Constr. Co.*, 214 F Supp 298,

299, distinguished in *Hall v. United States*, 266 FSupp 671.

Under section 48-101 and this section a woman by her marriage obtains a contractual right to consortium. *Dutton v. Hightower & Lubrecht Constr. Co.*, 214 F Supp 298, 300.

References

Clark v. Clark, 143 M 183, 387 P 2d 907.

36-102. (5783) Repealed.

Repeal

Section 36-102 (Sec. 211, Civ. C. 1895), relating to liability exemption procedure,

was repealed by Sec. 5, Ch. 164, Laws of 1975, and by Sec. 23, Ch. 293, Laws of 1975.

36-103. (5784) Duties of husband and wife as to support. In so far as each is able, the husband and wife shall support each other out of their property and labor. As used in this section, the word "support" includes the nonmonetary support provided by a spouse as homemaker.

History: En. Sec. 212, Civ. C. 1895; re-en. Sec. 3692, Rev. C. 1907; re-en. Sec. 5784, R. C. M. 1921; amd. Sec. 1, Ch. 293, L. 1975. Field Civ. C. Sec. 77.

Amendments

The 1975 amendment rewrote this section. For prior version, see parent volume.

36-108. (5789) May be joint tenants.

Proceeds from Sale of Real Property

In absence of agreement to the contrary, proceeds of a sale of joint tenancy

property pursuant to a contract are held in joint tenancy. In *re Estate of Rickner*, — M —, 518 P. 2d 1160.

36-110. (5791) Repealed.**Repeal**

Section 36-110 (Sec. 219, Civ. C. 1895; Sec. 2, Ch. 293, L. 1975), relating to

legal actions by married people in their own name, was repealed by Sec. 25, Ch. 33, Laws of 1977.

36-111. (5792) Individual property of married person. All the property of a married person owned before marriage and that acquired afterwards is his individual property. The married person may, without consent, agreement and signature of his spouse, convey and transfer his individual property, real or personal, including the fee simple title to real property or execute a power of attorney for the conveyance and transfer thereof.

History: En. Sec. 220, Civ. C. 1895; re-en. Sec. 3700, Rev. C. 1907; re-en. Sec. 5792, R. C. M. 1921; amd. Sec. 1, Ch. 63, L. 1923; amd. Sec. 3, Ch. 293, L. 1975. Cal. Civ. C. Sec. 162.

Amendments

The 1975 amendment substituted references to a married person, his individual property, and his spouse, for references to the wife, her separate property, and her husband.

36-112. (5793) Inventory of individual personal property of married person. A married person's title to and ownership of his individual property may be proved or demonstrated in the same manner that a single person's ownership of or title to his individual property may be proved. Provided, however, that if a married person chooses, he may make out and sign an inventory of his individual personal property, which inventory shall be acknowledged or proved in the same manner required by law for the acknowledgment or proof of a grant of real property, and recorded in the office of the county clerk of the county in which the person lives.

History: En. Sec. 221, Civ. C. 1895; re-en. Sec. 3701, Rev. C. 1907; re-en. Sec. 5793, R. C. M. 1921; amd. Sec. 4, Ch. 293, L. 1975. Cal. Civ. C. Sec. 165.

Amendments

The 1975 amendment rewrote this section which provided for recording of the inventory of the wife's separate personal property. For prior version, see parent volume.

36-113. (5794) Effect of filing inventory. The filing of the inventory in the clerk's office is notice and prima facie evidence of the title of the person so filing.

History: En. Sec. 222, Civ. C. 1895; re-en. Sec. 3702, Rev. C. 1907; re-en. Sec. 5794, R. C. M. 1921; amd. Sec. 5, Ch. 293, L. 1975.

Amendments

The 1975 amendment substituted "person so filing" for "wife" at the end of the section.

36-114. (5795) Earnings and accumulations of married person. The earnings and accumulations of a married person are not liable for the debts of that person's spouse except for debts incurred for necessary articles procured for the use and benefit of the married person, his spouse, or minor children.

History: En. Sec. 223, Civ. C. 1895; re-en. Sec. 3703, Rev. C. 1907; re-en. Sec. 5795, R. C. M. 1921; amd. Sec. 6, Ch. 293, L. 1975. Cal. Civ. C. Sec. 168.

Amendments

The 1975 amendment substituted "a

married person" for "the wife"; substituted "that person's spouse" for "the husband"; and added "except for debts incurred for necessary articles procured for the use and benefit of the married person, his spouse, or minor children."

36-115. (5796) Same, when separated. The earnings and accumulations of a married person, and of his minor children living with him or in his custody, while he is living separate from his spouse, are the individual property of such person. Except that, to the extent that a mutual duty of support between the husband and wife as established by section 36-103 still exists, such earnings and accumulations are liable for debts incurred for necessary articles procured for the use and benefit of the married person, his spouse or minor children.

History: En. Sec. 224, Civ. C. 1895; re-en. Sec. 3704, Rev. C. 1907; re-en. Sec. 5796, R. C. M. 1921; amd. Sec. 7, Ch. 293, L. 1975. Cal. Civ. C. Sec. 169.

Amendments

The 1975 amendment substituted references to a married person and his minor

children in his custody, his spouse, and the individual property of such person, for references to the wife and her minor children in her custody, her husband, and the separate property of the wife in the first sentence; added the second sentence; and made minor changes in phraseology.

36-116. (5797) Work and labor of married person. All work and labor performed by a married person for a person other than his spouse and children shall, unless there is a written agreement on his part to the contrary, be presumed to be performed on his separate account. This section does not affect the liability of earnings for debts incurred for necessary articles procured for the use and benefit of the married person, his spouse, or minor children, as established by sections 36-114, 36-115, 36-118, and 36-118.1.

History: En. Sec. 1442, 5th Div. Comp. Stat. 1887; re-en. Sec. 225, Civ. C. 1895; re-en. Sec. 3705, Rev. C. 1907; re-en. Sec. 5797, R. C. M. 1921; amd. Sec. 8, Ch. 293, L. 1975.

Amendments

The 1975 amendment substituted "married person" for "married woman"; substituted "his spouse" for "her husband"; added the second sentence; and made minor changes in phraseology.

36-117. (5798) Debts of spouse contracted before marriage. The property of a married person is not liable for the debts of the person's spouse contracted before marriage.

History: En. Sec. 226, Civ. C. 1895; re-en. Sec. 3706, Rev. C. 1907; re-en. Sec. 5798, R. C. M. 1921; amd. Sec. 9, Ch. 293, L. 1975. Cal. Civ. C. Sec. 170.

Amendments

The 1975 amendment substituted "married person" for "husband"; and substituted "person's spouse" for "wife."

36-118. (5799) Individual property of married person—how far liable. Individual property of a married person listed in an inventory as provided in sections 36-112 and 36-113, R. C. M. 1947, or otherwise proved to be the individual property of the married person is exempt from all debts and liabilities of that person's spouse, except:

(1) when the debt or liability is for necessary articles procured for the use and benefit of the married person, the spouse, or minor children; or

(2) when the property is in the sole and exclusive possession of the spouse and the creditors have dealt with the spouse in good faith on the credit of the individual property without knowledge that the property does not belong to the spouse.

History: Ap. p. Sec. 1, p. 369, Bannack Stat.; re-en. Sec. 1, p. 521, Cod. Stat. 1871;

re-en. Sec. 866, 5th Div. Rev. Stat. 1879; re-en. Sec. 1432, 5th Div. Comp. Stat.

1887; amd. Sec. 227, Civ. C. 1895; re-en. Sec. 3707, Rev. C. 1907; re-en. Sec. 5799, R. C. M. 1921; amd. Sec. 10, Ch. 293, L. 1975. Cal. Civ. C. Sec. 171.

Amendments

The 1975 amendment rewrote this section. For prior version, see parent volume.

36-118.1. Necessity determined by standard of living. For purposes of determining whether a married person's earnings or individual property are exempt from the debts incurred by the person's spouse, the phrase "necessary articles" includes all such goods and services as are reasonably required to provide for the health, welfare, comfort, and education of the married person, his spouse, and minor children taking into consideration the earnings, resources, and general standard of living of such persons.

History: En. 36-118.1 by Sec. 11, Ch. 293, L. 1975.

Title of Act

An act to change the laws relating to husbands and wives in regard to their mutual obligations of support, control of their individual property and their ability

to act as individuals, in order to eliminate sexual discrimination in such laws; amending sections 5-106, 16-2902, 16-2905, 36-103, 36-110 through 36-120, 36-127 through 36-130, 61-104, and 61-117, R. C. M. 1947, creating a new section 36-118.1, R. C. M. 1947; and repealing sections 36-102 and 36-121, R. C. M. 1947.

36-119. (5800) Support of spouse. If a married person who is able neglects to make adequate provision for the financial support of his spouse, except in the cases mentioned in the next section, any other person may in good faith supply the spouse with articles necessary for support and recover the reasonable value thereof from the married person who has failed to provide such support.

History: En. Sec. 244, Civ. C. 1895; re-en. Sec. 3724, Rev. C. 1907; re-en. Sec. 5800, R. C. M. 1921; amd. Sec. 12, Ch. 293, L. 1975. Cal. Civ. C. Sec. 174. Field Civ. C. Sec. 84.

Amendments

The 1975 amendment substituted "married person who is able" for "husband"; inserted "financial" before "support"; substituted "spouse" for "wife"; substituted "the married person who has failed to provide such support" for "husband"; and made minor changes in phraseology.

36-120. (5801) Married person not liable when abandoned by spouse. A married person abandoned by his spouse is not liable for the spouse's support until the spouse offers to return, unless the spouse was justified, by the person's misconduct, in abandoning him; nor is a married person liable for support of a spouse who is living separate from him by agreement, unless such support is stipulated in the agreement.

History: En. Sec. 245, Civ. C. 1895; re-en. Sec. 3725, Rev. C. 1907; re-en. Sec. 5801, R. C. M. 1921; amd. Sec. 13, Ch. 293, L. 1975. Cal. Civ. C. Sec. 175. Based on Field Civ. C. Sec. 85.

Amendments

The 1975 amendment substituted "married person" for "husband"; substituted "spouse" for "wife"; and made minor changes in phraseology.

36-121. (5802) Repealed.

Repeal

Section 36-121 (Sec. 245, Civ. C. 1895), relating to the husband's support by the

wife, was repealed by Sec. 23, Ch. 293, Laws of 1975.

36-122. (5803) Rights of husband and wife, etc.**Divorce**

This chapter is not controlling after dis-

solution of the marriage by divorce. *Cook v. Cook*, 159 M 98, 495 P 2d 591.

36-127. (5808) Married person may act as personal representative, guardian, conservator, or trustee. A married person may be a personal representative, guardian, conservator, or trustee, and may bind himself and the estate he represents without any act or assent on the part of the person's spouse.

History: En. Sec. 1443, 5th Div. Comp. Stat. 1887; re-en. Sec. 252, Civ. C. 1895; re-en. Sec. 3732, Rev. C. 1907; re-en. Sec. 5808, R. C. M. 1921; amd. Sec. 14, Ch. 293, L. 1975.

Amendments

The 1975 amendment substituted "married person" for "married woman"; substituted "personal representative" for "executrix, administratrix"; inserted "conservator" before "or trustee"; substituted "the person's spouse" for "her husband"; and made minor changes in phraseology.

36-128. (5809) May sue and be sued. A married person may sue and be sued in the same manner as if he were sole.

History: En. Sec. 1444, 5th Div. Comp. Stat. 1887; re-en. Sec. 253, Civ. C. 1895; re-en. Sec. 3733, Rev. C. 1907; re-en. Sec. 5809, R. C. M. 1921; amd. Sec. 15, Ch. 293, L. 1975.

Duffy v. Lipsman-Fulkerson & Co., 200 F Supp 71, 73; *Dutton v. Hightower & Lubrecht Constr. Co.*, 214 F Supp 298, 299, distinguished in *Hall v. United States*, 266 FSupp 671.

Amendments

The 1975 amendment substituted references to a married person for references to a married woman.

Action for Loss of Consortium

A wife can maintain an action for loss of consortium when such loss is the result of negligent injury to her husband.

Removal of Common-law Disability

This section and section 36-110 are procedural and create no new rights, but only remove the common-law disability of married women to enforce their rights otherwise created and existing. *Dutton v. Hightower & Lubrecht Constr. Co.*, 214 F Supp 298, 300.

36-129. (5810) Liable for own contracts. The contracts made by a married person, in respect to his individual property, labor, or services, shall not be binding upon the person's spouse, nor render him nor his property liable therefor; but the contracting person and that person's individual property shall be liable on such contracts in the same manner as if such person were sole.

History: En. Sec. 1446, 5th Div. Comp. Stat. 1887; re-en. Sec. 254, Civ. C. 1895; re-en. Sec. 3734, Rev. C. 1907; re-en. Sec. 5810, R. C. M. 1921; amd. Sec. 16, Ch. 293, L. 1975.

Amendments

The 1975 amendment substituted "married person" for "married woman"; substituted "the person's spouse" for "her husband" and made minor changes in phraseology.

36-130, 36-131. (5811, 5812) Repealed.**Repeal**

Sections 36-130, 36-131 (Sec. 1448, 5th Div. Comp. Stat. 1887; Secs. 256, 257, Civ. C. 1895; Sec. 17, Ch. 293, L. 1975); re-

lating to making of contracts by married persons and tenancy by curtesy, were repealed by Sec. 25, Ch. 33, Laws of 1977.

CHAPTER 2—CONCILIATION LAW

- Section 36-201. Manner of citation.
 36-202. Purposes—definitions—where applicable.
 36-203. Conciliation court—judges—budget—conciliation counselors—probation officers—proceedings confidential.
 36-204. Procedure.
 36-205. Powers of the court.

36-201. Manner of citation. This act may be cited as the “Montana Conciliation Law.”

History: En. Sec. 1, Ch. 238, L. 1963.

Title of Act

An act constituting the several district courts, courts of conciliation for the purpose of protecting the rights of children and to promote and protect the family life and the institution of matrimony by providing a means for reconciliation of spouses and the amicable settlement of domestic and family controversies, and specifically where minor children are involved; defining the jurisdiction of said courts and to establish such courts which requires a determination by the judge or judges of the district whether such conciliation court is necessary in said district; providing for the designation of a judge to handle conciliation cases, necessary personnel, and payment of the expenses of said courts of conciliation by the respective counties in which said court is

functioning; the manner of holding conferences, privacy of hearings, proceedings and recommendations; no fees to be charged, the hearings to be informal, stay of divorce proceedings for not to exceed thirty days to give the parties an opportunity for a reconciliation conference, transfer of cases to the conciliation court when it appears that the welfare of minors is going to be seriously affected and permitting the jurisdiction of the conciliation court where no minors are involved if it appears that a reconciliation may be had, granting the conciliation court the same powers as a district court under the Constitution of the state of Montana, Article 8, Section 1, section 93-301 to 93-321 inclusive, Revised Codes of Montana, 1947, and acts amendatory and relating thereto, including the right of disqualification of judges of courts of conciliation.

36-202. Purposes—definitions—where applicable. (1) Purposes. The purposes of this chapter are to protect the rights of children and to promote the public welfare by preserving, promoting, and protecting family life and the institution of matrimony, and to provide means for the reconciliation of spouses and the amicable settlement of domestic and family controversies.

(2) Definitions. As used in this chapter “shall” is mandatory and “may” is permissive.

(3) Applicability of the Law—Determination by District Court. The provisions of this chapter shall be applicable only in counties in which the district court determines that the social conditions in the county and the number of domestic relations cases in the courts render the procedures herein provided necessary to the full and proper consideration of such cases and the effectuation of the purposes of this chapter. Such determination shall be made annually in the month of January or July by the judge of the district court in counties having only one such judge, and by a majority of the judges of the district court in counties having more than one such judge.

History: En. Sec. 2, Ch. 238, L. 1963.

36-203. Conciliation court—judges—budget—conciliation counselors—probation officers—proceedings confidential. (1) Exercise of Jurisdic-

tion. Each district court shall exercise the jurisdiction conferred by this chapter, and while sitting in the exercise of such jurisdiction shall be known and referred to as the "conciliation court."

(2) Selection of Judges. In counties having more than one judge of the district court, the judges of such court shall annually, in the month of January or July, designate at least one judge to hear all cases under this chapter. The judge or judges so designated shall hold as many sessions of the conciliation court in each week as are necessary for the prompt disposition of the business before the court.

(3) Transfer of Cases. Another district judge may be called in by the judge of the conciliation court to act as judge of the conciliation court during any period when the judge of the conciliation court is on vacation, absent, or for any reason unable to perform his duties. Any judge so appointed shall have all of the powers and authority of a judge of the conciliation court in cases under this chapter.

(4) Budget. The provisions of the county budget system, section[s] 16-1901 to 1911, inclusive, R.C.M. 1947, shall, except as provided by section 4, subsection 9 [36-204 (9)] of this act, be applicable to expenditures for the court of conciliation; provided, however, that the court may submit to the board of county commissioners the information required by section 16-1901 on or before July 1st of each year.

(5) Manner of Conciliation. The judge of the conciliation court may hear all matters invoked under this act or he may refer such matters to a pastor or director of any religious denomination to which the parties may belong, psychiatrist, physician, attorney, social worker, or other person who is competent and qualified by training and experience in personal counseling. Such person shall be referred to herein as the conciliation counselor.

The conciliation counselor shall:

(a) Hold conciliation conferences with parties to, and hearings in, proceedings under this chapter, and make recommendations concerning such proceedings to the judge of the conciliation court.

(b) Cause such reports to be made, such statistics to be compiled, and such records to be kept as the judge of the conciliation court may direct.

(6) Probation Officers Duties. The probation officer in every county shall give such assistance to the conciliation court as the court may request to carry out the purposes of this chapter, and to that end the probation officer shall, upon request and with the consent of both parties, make investigations and reports as requested, and in cases pursuant to this chapter, shall exercise all the powers and perform all the duties granted or imposed by the laws of this state relating to probation or to probation officers.

(7) Privacy of Hearings. All district court hearings or conferences in proceedings under this chapter shall be held in private and the court shall exclude all persons except the officers of the court, the parties, their counsel and witnesses. Conferences may be held with each party and his counsel separately and in the discretion of the judge or counselor conducting the conference or hearing, all counsel may be excluded. All com-

munications, verbal or written, from parties to the judge or counselor in a proceeding under this chapter shall be deemed made to such officer in official confidence.

The files of the conciliation court shall be closed. The petition, supporting affidavit, reconciliation agreement and any court order made in the matter may be opened to inspection by any party or his counsel upon the written authority of the judge of the conciliation court.

(8) Jurisdiction. The jurisdiction of the conciliation courts and the powers thereof shall be as provided in the constitution of Montana, chapter 3 [Title 93], Revised Codes of Montana, 1947, and acts amendatory and relating thereto, including the right of disqualification of any judge of the conciliation court.

History: En. Sec. 3, Ch. 238, L. 1963;
amd. Sec. 16, Ch. 100, L. 1973.

Amendments
The 1973 amendment deleted "Article 8, Section 1" following "constitution of Montana" in subsection (8).

36-204. Procedure. (1) Whenever any controversy exists between the spouses which may, unless a reconciliation is achieved, result in the dissolution or annulment of the marriage or in the disruption of the household and there is any minor child of the spouses or of either of them whose welfare might be affected thereby, the conciliation court shall have jurisdiction over the controversy and over the parties thereto and all persons having any relation to the controversy as further provided in this chapter.

(2) Prior to the filing of any action for dissolution, annulment, or separate maintenance, either spouse or both spouses may file in the conciliation court a petition invoking the jurisdiction of the court for the purpose of preserving the marriage by effecting a reconciliation between the parties or for amicable settlement of the controversy between the spouses so as to avoid further litigation over the issue involved.

(3) The petition shall be captioned substantially as follows:

District Court of the State of Montana
For the County of _____

Upon the petition of _____ Petition for Conciliation

(Under the Conciliation
Petitioner _____ Court Law)

And concerning _____ and

Respondents.

To the Conciliation Court:

(4) The petition shall:

(a) allege that a controversy exists between the spouses and request the aid of the court to effect a reconciliation or an amicable settlement of the controversy;

(b) state the name and age of each minor child whose welfare may be affected by the controversy.

(c) state the name and address of the petitioner or the names and addresses of the petitioners;

(d) if the petition is presented by one spouse only, name the other spouse as a respondent and state the address of that spouse;

(e) also name as a respondent any other person who has any relation to the controversy and state the address of the person, if known to the petitioner;

(f) state such other information as the court may by rule require.

(5) The clerk of the court shall provide, at the expense of the county, blank forms for petitions for filing pursuant to this chapter. The probation officers of the county and the attaches and employees of the conciliation court shall assist any person in the preparation and presentation of any such petition when any person requests such assistance. All public officers in each county shall refer to the conciliation court all petitions and complaints made to them in respect to controversies within the jurisdiction of the conciliation court.

(6) No fee may be charged by any officer for filing the petition nor may any fee be charged by any officer for the performance of any duty pursuant to this chapter.

(7) The court shall fix a reasonable time and place for hearing on the petition and shall cause such notice of the filing of the petition and the time and place of the hearing as it considers necessary to be given to the respondents. The court may, when it considers it necessary, issue a citation to any respondent requiring him to appear at the time and place stated in the citation and may require the attendance of witnesses as in other civil cases.

(8) For the purpose of conducting hearings pursuant to this chapter, the conciliation court may be convened at any time and place within the district and the hearing may be had in chambers or otherwise, except that the time and place for hearing may not be different from the time and place provided by law for the trial of civil actions if any party, prior to the hearing, objects to any different time or place.

(9) The hearing shall be conducted informally as a conference or series of conferences to effect a reconciliation of the spouses or an amicable adjustment or settlement of the issues of the controversy. To facilitate and promote the purposes of this chapter, the court may, with the consent of both of the parties to the proceedings, recommend or invoke the aid of physicians, psychiatrists, other specialists or scientific experts, or the pastor or director of any religious denomination to which the parties may belong. Such aid, however, shall not be at the expense of the court or of the county, unless the county commissioners of the county specifically provide and authorize such aid.

(10) At or after hearing, the court may make such orders in respect to the conduct of the spouses and the subject matter of the controversy as the court considers necessary to preserve the marriage or to implement the reconciliation of the spouses, but in no event may such orders be effective for more than 30 days from the hearing of the petition, unless

the parties mutually consent to a continuation of such time. Any reconciliation agreement between the parties may be reduced to writing, and with the consent of the parties, a court order may be made requiring the parties to comply fully therewith.

(11) During a period beginning upon the filing of the petition for conciliation and continuing until 30 days after the hearing of the petition for conciliation, neither spouse shall file any action for dissolution, annulment of marriage, or separate maintenance. If after the expiration of such period, the controversy between the spouses has not been terminated, either spouse may institute proceedings for dissolution, annulment of marriage, or separate maintenance. The pendency of a dissolution, annulment, or separate maintenance action may not operate as a bar to the instituting of proceedings for conciliation under this chapter.

(12) Whenever any action for dissolution, annulment of marriage, or separate maintenance is filed in the district court and it appears to the court at any time during the pendency of the action that there is any minor child of the spouses or of either of them whose welfare may be adversely affected by the dissolution or annulment of the marriage or the disruption of the household and that there appears to be some reasonable possibility of a reconciliation being effected, the case may be transferred to the conciliation court for proceedings for reconciliation of the spouses or amicable settlement of issues in controversy, in accordance with the provisions of this chapter.

(13) Whenever application is made to the conciliation court for conciliation proceedings in respect to a controversy between spouses or a contested action for dissolution, annulment, or separate maintenance but there is no minor child whose welfare may be affected by the results of the controversy and it appears to the court that reconciliation of the spouses or amicable adjustment of the controversy can probably be achieved and that the work of the court in cases involving children will not be seriously impeded by acceptance of the case, the court may accept and dispose of the case in the same manner as similar cases involving the welfare of children are disposed of. In the event of such application and acceptance, the court shall have the same jurisdiction over the controversy and the parties thereto or having any relation thereto that it has under this chapter in similar cases involving the welfare of children.

History: En. Sec. 5, Ch. 238, L. 1963; **Amendments**
amd. Sec. 17, Ch. 100, L. 1973; amd. Sec.
2, Ch. 33, L. 1977.

The 1977 amendment substituted "dissolution" for "divorce" throughout the section; and made minor changes in phraseology, punctuation and style.

36-205. Powers of the court. The conciliation court shall have the same powers as the district court under the constitution of the state of Montana, section[s] 93-301 to 93-321 inclusive, Revised Codes of Montana, 1947, and acts amendatory and relating thereto, including the right of disqualification of judges of courts of conciliation.

History: En. Sec. 5, Ch. 238, L. 1963; **Amendments**
amd. Sec. 17, Ch. 100, L. 1973.

The 1973 amendment deleted "Article 8, Section 1" following the reference to the constitution.

TITLE 37—INITIATIVE AND REFERENDUM

- Chapter 1. State initiative and referendum, 37-111, 37-115 to 37-138.
2. Initiated constitutional amendments and conventions, Repealed—Section 29, Chapter 342, Laws of 1977.
 3. County initiative and referendum, 37-301 to 37-311.

CHAPTER 1—STATE INITIATIVE AND REFERENDUM

- Section 37-111. Informational pamphlets.
- 37-115. Initiative and referendum procedures established.
- 37-116. Who may petition—sufficiency of signature.
- 37-117. Form of petition generally—approval of form required—petitions numbered.
- 37-118. Petition for the initiative.
- 37-119. Petition for the referendum.
- 37-120. Petition for initiative for constitutional convention.
- 37-121. Petition for initiative for constitutional amendment.
- 37-122. Submission of petition sheets—certification of signatures.
- 37-123. County official to forward verified sheets.
- 37-124. Consideration and counting of signatures by secretary of state.
- 37-125. Time for filing.
- 37-126. Certification of petition to governor—governor's proclamation.
- 37-127. Transmittal of issues to the attorney general—attorney general's statement.
- 37-128. Voter information pamphlet.
- 37-129. Time for making appointments—chairman.
- 37-130. Expenses allowed.
- 37-131. Limitation on length of argument advocating approval or rejection—time of filing.
- 37-132. Rebuttal arguments.
- 37-133. Rejection of improper arguments—responsibility of author for content.
- 37-134. Printing and distribution of voter information pamphlet.
- 37-135. Secretary of state to certify ballot form.
- 37-136. Determination of result of election.
- 37-137. Effective date of initiative and referendum issues.
- 37-138. Violations—penalties.

37-101 to 37-110. (99 to 108) Repealed.

Repeal	
Sections 37-101 to 37-110 (Secs. 1 to 10, Ch. 62, L. 1907; Secs. 1, 2, Ch. 66, L. 1913; Sec. 1, Ch. 52, L. 1927; Sec. 1, Ch. 137, L. 1927; Sec. 1, Ch. 18, L. 1937; Sec. 2, Ch. 104, L. 1945; Sec. 1, Ch. 67, L. 1947; Sec. 1, Ch. 22, L. 1963; Sec. 1, Ch. 21, L. 1969; Sec. 4, Ch. 35, L. 1973; Sec. 1, Ch. 37, L. 1973; Secs. 1 to 8, Ch. 454, L.	1973; Secs. 1 to 3, Ch. 108, L. 1974; Sec. 15, Ch. 326, L. 1974; Sec. 1, Ch. 330, L. 1975; Secs. 1 to 10, Ch. 354, L. 1975; Sec. 4, Ch. 38, L. 1977; Sec. 47, Ch. 334, L. 1977; Secs. 68, 69, 72, 73, Ch. 365, L. 1977), relating to state initiative and referendum, were repealed by Sec. 29, Ch. 342, L. 1977.

37-111. Informational pamphlets. (1) Whenever a ballot issue is to be submitted to the people the secretary of state shall have printed pamphlets containing the information specified in 37-107.

(2) Whenever more than one ballot issue is to be voted on at a single election, the secretary of state may publish a single pamphlet for all of the ballot issues.

(3) The pamphlets are to be distributed as provided in 37-107.

History: En. 37-111 by Sec. 74, Ch. 365, L. 1977.

Compiler's Notes
Section 37-107, cited in this section,

was repealed by Sec. 29, Ch. 342, L. 1977. See sec. 37-128.

Separability Clause

Section 75 of Ch. 365, Laws 1977 read "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applica-

tions, the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clause

Section 76 of Ch. 365, Laws 1977 read "Sections 23-3021, 23-3030, and 23-4404, R. C. M. 1947, are repealed."

37-112 to 37-114. Reserved.

37-115. Initiative and referendum procedures established. The right of the people to petition to enact laws by initiative, to petition to approve or reject by referendum any act of the legislature except an appropriation of money, to call for a vote on whether there shall be a constitutional convention, and to propose constitutional amendments by initiative as guaranteed by The Constitution of the State of Montana may be exercised through adherence to the procedures established in this chapter.

History: En. 37-115 by Sec. 1, Ch. 342, L. 1977.

Title of Act

An act to generally revise the laws implementing the constitutional right of the people to petition for initiative and referendum on statewide issues; amending

sections 23-2704, 23-2802, 23-3326, and 89-2330.3, R. C. M. 1947; and repealing sections 37-101 through 37-104, 37-104.1, 37-104.2, 37-104.3, 37-104.4, 37-104.5, 37-104.6, 37-104.7, 37-104.8, 37-104.9, 37-104.10, 37-105 through 37-110, and 37-201 through 37-203, R. C. M. 1947.

37-116. Who may petition—sufficiency of signature. A petition for the initiative, the referendum, or to call a constitutional convention may be signed only by a qualified elector of the state of Montana. A signature may not be counted unless the elector has signed in substantially the same manner as on the voter registry card.

History: En. 37-116 by Sec. 2, Ch. 342, L. 1977.

37-117. Form of petition generally—approval of form required—petitions numbered. (1) A petition for the initiative, the referendum, or to call a constitutional convention must be substantially in the form provided by this chapter. Clerical or technical errors that do not interfere with the ability to judge the sufficiency of signatures on the petition do not render a petition void.

(2) **Petition—**Petition sheets may not exceed 8½ x 14 inches in size. Separate sheets of a petition may be fastened in sections of not more than 25 sheets. Near the top of each sheet containing signature lines must be printed the title of the statute or constitutional amendment proposed or the measure to be referred or a statement that the petition is for the purpose of calling a constitutional convention. If signature lines are printed on both the front and back of a petition sheet the information required above must appear on both the front and back of the sheet. The complete text of the measure proposed or referred must be attached to or contained within each signature sheet if sheets are circulated separately. If sheets are

circulated in sections the complete text of the measure must be attached to each section.

(3) Before a petition may be circulated for signatures, a sample sheet must be submitted to the secretary of state in the form in which it will be circulated. The secretary of state shall refer a copy of the sheet to the attorney general for his approval. The secretary of state and attorney general must each review the sheet for sufficiency as to form and approve or reject the form of the petition stating his reasons therefor. The attorney general shall return the sheet together with his comments within 3 working days after receiving it. The secretary of state shall review the comments of the attorney general and make a final decision as to the approval or disapproval of the form of the sheet. The secretary of state must notify the person who submitted the sheet of the approval or rejection together with reasons for rejection, if applicable, within 1 week of receiving the sheet.

(4) The secretary of state shall serially number all submitted petitions that are approved as to form continuously from year to year. The numbering system shall distinguish the different types of petitions received and include provisions for numbering measures referred to the people by the legislature.

History: En. 37-117 by Sec. 3, Ch. 342,
L. 1977.

37-118. Petition for the initiative. (1) The following is substantially the form for a petition calling for a vote to enact a law by the initiative:

WARNING

A person who purposefully signs a name other than his own to this petition or who signs his name more than once upon a petition for the same issue at one election or who is not, at the time he signs this petition, a qualified elector of the state of Montana is punishable by a fine not exceeding \$500 or imprisonment in the county jail for a term not to exceed 6 months, or both, or imprisonment in the state prison for a term not to exceed 10 years.

PETITION FOR INITIATIVE

To the Honorable _____, Secretary of State of the state of Montana:

We, the undersigned qualified electors of the state of Montana, respectfully propose that the measure printed within this petition, entitled (title of proposed law), be submitted to the qualified electors of the state of Montana for their approval or rejection at the general election to be held on the _____ day of _____, 19—. By his signature, each signer certifies: I have personally signed this petition; I am a qualified elector of the state of Montana; I have not signed another petition for the same issue for the same election; and my post-office address and legislative representative district number are correctly written after my name to the best of my knowledge and belief.

(2) Numbered lines shall follow the above heading. Each numbered line shall contain spaces for the signature, post-office address, legislative representative district number, and printed last name of the signer.

History: En. 37-118 by Sec. 4, Ch. 342,
L. 1977.

37-119. Petition for the referendum. (1) The following is substantially the form for a petition calling for approval or rejection of an act of the legislature by the referendum:

WARNING

A person who purposefully signs a name other than his own to this petition or who signs his name more than once upon a petition for the same issue at one election or who is not, at the time he signs this petition, a qualified elector of the state of Montana is punishable by a fine of not exceeding \$500 or imprisonment in the county jail for a term not to exceed 6 months, or both, or imprisonment in the state prison for a term not to exceed 10 years.

PETITION FOR REFERENDUM

To the Honorable _____, Secretary of State of the state of Montana:

We, the undersigned qualified electors of the state of Montana, respectfully petition that Senate (House) Bill Number _____, entitled (title of act), passed by the _____ Legislature of the state of Montana at the regular (special) session of the legislature that commenced _____, 19—, be referred to the people of the state for their approval or rejection at the general election to be held on the _____ day of _____, 19—. By his signature, each signer certifies: I have personally signed this petition; I am a qualified elector of the state of Montana; I have not signed another petition for the same issue for the same election; and my post-office address and legislative representative district number are correctly written after my name to the best of my knowledge and belief.

(2) Numbered lines shall follow the above heading. Each numbered line shall contain spaces for the signature, post-office address, legislative representative district number, and printed last name of the signer.

History: En. 37-119 by Sec. 5, Ch. 342,
L. 1977.

37-120. Petition for initiative for constitutional convention. (1) The following is substantially the form for a petition to direct the secretary of state to submit to the qualified voters the question of whether there shall be a constitutional convention:

WARNING

A person who purposefully signs a name other than his own to this petition or who signs his name more than once upon a petition for the same issue at one election or who is not, at the time he signs this petition, a qualified elector of the state is punishable by a fine not exceeding \$500 or imprisonment in the county jail for a term not to exceed 6 months, or both, or imprisonment in the state prison for a term not to exceed 10 years.

INITIATIVE PETITION ON THE QUESTION OF CALLING A CONSTITUTIONAL CONVENTION

To the Honorable _____, Secretary of State of the state of Montana:

We, the undersigned qualified electors of the state of Montana, respectfully petition that the question of whether there shall be an unlimited convention to revise, alter, or amend The Constitution of the State of Montana be submitted to the qualified electors of the state of Montana for their approval or rejection at the general election to be held on the _____ day of _____, 19—. By his signature, each signer certifies: I have personally signed this petition; I am a qualified elector of the state of Montana; I have not signed another petition for the same issue for the same election; and my post-office address and legislative representative district number are correctly written after my name to the best of my knowledge and belief.

(2) Numbered lines shall follow the above heading. Each numbered line shall also contain spaces for the signature, post-office address, legislative representative district number, and printed last name of the signer.

History: En. 37-120 by Sec. 6, Ch. 342,
L. 1977.

37-121. Petition for initiative for constitutional amendment. (1) The following is substantially the form for a petition for the initiative to amend the constitution:

WARNING

A person who purposefully signs a name other than his own to this petition or who signs his name more than once upon a petition for the same issue at one election or who is not, at the time he signs this petition, a qualified elector of the state of Montana is punishable by a fine not exceeding \$500 or imprisonment in the county jail for a term not to exceed 6 months, or both, or imprisonment in the state prison for a term not to exceed 10 years.

PETITION PROPOSING A CONSTITUTIONAL AMENDMENT BY THE INITIATIVE

To the Honorable _____, Secretary of State of the state of Montana:

We, the undersigned qualified electors of the state of Montana, respectfully petition that the constitutional amendment printed within this petition be submitted to the qualified electors of the state of Montana for their approval or rejection at the statewide election to be held on the _____ day of _____, 19—. By his signature, each signer certifies: I have personally signed this petition; I am a qualified elector of the state of Montana; I have not signed another petition for the same issue for the same election; and my post-office address and legislative representative district number are correctly written after my name to the best of my knowledge and belief.

(2) Numbered lines shall follow the above heading. Each numbered line shall contain spaces for the signature, post-office address, legislative representative district number, and printed last name of the signer.

History: En. 37-121 by Sec. 7, Ch. 342,
L. 1977.

37-122. Submission of petition sheets—certification of signatures. (1) Signed sheets or sections of petitions shall be submitted to the official responsible for registration of electors in the county in which the signatures were obtained no sooner than 1 year and no later than 2 weeks before the final date for filing the petition with the secretary of state. In no case, however, may a person submit a sheet or section of a petition to the county official so late as to allow less than 1 working day before the final date for filing the petition with the secretary of state for every 200 signatures on the sheets or sections of the petition submitted.

(2) An affidavit, in substantially the following form, shall be attached to each sheet or section submitted to the county official:

(Name of person circulating petition), affirms, or being first sworn, deposes and says: That I circulated or assisted in circulating the petition to which this affidavit is attached and I believe the signatures thereon are genuine, are the signatures of the persons whose names they purport to be, and that the signers knew the contents of the petition before signing the same.

_____ (Signature)

Subscribed and sworn to before me this _____ day of _____, 19—.

_____ (Person authorized to take oaths)

Seal _____ (Title or notarial information)

History: En. 37-122 by Sec. 8, Ch. 342,
L. 1977.

37-123. County official to forward verified sheets. (1) The county official verifying the number of registered electors signing the petition shall forward it to the secretary of state by certified mail with a certificate in substantially the following form attached:

To the Honorable _____, Secretary of State of the state of Montana:

I, _____, _____ (title) of the County of _____, certify that I have examined the attached (section containing _____ sheets) or (_____ sheets) of the petition for (referendum, initiative, constitutional convention, or constitutional amendment) No. _____ in the manner prescribed by law; and I believe that _____ (number) signatures in Legislative Representative District No. _____ (repeat for each district included in sheet or section) are valid; and I further certify that the affidavit of the circulator of the (sheet) (section) of the petition is attached and the post-office address and legislative representative district number is completed for each valid signature.

Signed: _____ (Date) _____ (Signature)

Seal _____ (Title)

(2) The county official certifying the sheets or sections of a petition shall keep a copy of the sheets or sections certified in the official files of his office. The copies may be destroyed 3 months after the date of the election specified in the petition unless a court action is pending on the sufficiency of the petition.

(3) The county official receiving the sheets or sections of a petition shall check the names of all signers to verify they are registered electors of the county. In addition, the official shall randomly select signatures on each sheet or section and compare them with the signatures of the electors as they appear in the registration records of the office. If all the randomly selected signatures appear to be genuine, the number of signatures of registered electors on the sheet or section may be certified to the secretary of state without further comparison of signatures. If any of the randomly selected signatures do not appear to be genuine, all signatures on that sheet or section must be compared with the signatures in the registration records of the office.

(4) The county official to whom the sheets or sections of the petition are submitted may not retain a sheet or section for longer than 1 working day for each 200 signatures on the sheet or section. The secretary of state may extend this time if he is convinced the workload involved requires extension.

(5) A registered elector of a county having reason to believe that signatures on a petition that were not among those actually compared with signatures in the registration records of the county are not genuine may file a sworn statement or affirmation of his belief and request for comparison of those signatures he believes are not genuine with the county official certifying the sheet or section of the petition. If any of the challenged signatures are not genuine, the county official must compare all signatures on that sheet or section and issue an amended certificate to the secretary of state giving the correct number of valid signatures.

History: En. 37-123 by Sec. 9, Ch. 342, L. 1977.

37-124. Consideration and counting of signatures by secretary of state.

(1) The secretary of state shall consider and count only such signatures on petitions as are certified by the proper county official, and each such certificate is prima facie evidence of the facts stated therein. However, the secretary of state may consider and count any signature not certified by the county official that is certified by a notary public of the county in which the signer resides to be the genuine signature of an elector legally qualified to sign the petition.

(2) The official certificate of the notary public for any signature not certified as valid by the county official shall be in substantially the following form:

State of Montana)
County of _____) ss

I, _____ (name), a duly qualified and acting notary public in and for the above-named county and state, do hereby certify: that I am

personally acquainted with each of the following-named electors whose signatures are affixed to the annexed (petition) (copy of a petition), and I know of my own knowledge that they are registered electors of the state of Montana and of the county and legislative district written after their names in the petition and that their post-office address is correctly stated therein.

_____ (Names of such electors)

In Testimony Whereof, I have hereunto set my hand and official seal this _____ day of _____, 19_____.

_____ (Signature)
Seal _____ (Notarial information)

History: En. 37-124 by Sec. 10, Ch. 342, L. 1977.

37-125. Time for filing. Unless a specific time for filing is provided in the constitution, all petitions filed with the secretary of state, certified as provided by law, must be received before 5 p.m. of the second Friday of the fourth month prior to the election at which they are to be voted upon by the people.

History: En. 37-125 by Sec. 11, Ch. 342, L. 1977.

37-126. Certification of petition to governor—governor's proclamation. When sheets or sections of a petition for referendum, initiative, constitutional convention, or constitutional amendment containing a sufficient number of signatures have been filed with the secretary of state within the time required by the constitution or by law, he shall immediately certify to the governor that the completed petition has been officially filed. The governor shall include the titles of all ballot issues certified to him by the secretary of state or referred to the people or proposed by the legislature in the proclamation required by 23-2901 and shall also include a brief statement of each issue's tenor and effect.

History: En. 37-126 by Sec. 12, Ch. 342, L. 1977.

37-127. Transmittal of issues to the attorney general—attorney general's statement. (1) The secretary of state shall transmit a copy of a ballot issue proposed by any type of initiative petition or referred to the people by referendum petition and a copy of the form in which the issue will appear on the ballot to the attorney general on the same day he certifies the official filing of the completed petition to the governor.

(2) The secretary of state shall transmit a copy of an act referred to the people or a constitutional amendment proposed by the legislature and a copy of the form in which the issue will appear on the ballot to the attorney general no later than 6 months before the election at which the issue will be voted on by the people.

(3) Within 10 days after receiving a copy of a ballot issue that will be voted on by the people, the attorney general shall return to the secretary of state a statement not exceeding 100 words in ordinary plain lan-

guage explaining the general purpose of the issue submitted. The statement by the attorney general shall give a true and impartial statement of the purposes of the issue in plain, easily understood language and in a manner that is not an argument or likely to create prejudice either for or against the issue.

(4) At the same time he returns the statement explaining the purposes of the issue, the attorney general shall notify the secretary of state of his approval or disapproval of the ballot form for the issue submitted by the secretary. If the ballot form is not approved, the secretary of state shall immediately submit a new ballot form and notice of approval or disapproval must be given by the attorney general within 5 days of receiving the new form.

(5) If statements of the implication of a vote for or against a ballot issue have been provided by the legislative act or petition placing the issue on the ballot, the secretary of state shall include a copy of the statements with the copy of the issue submitted to the attorney general. When the attorney general returns his statement of the general purpose of the issue to the secretary of state, he shall include a notice that he has reviewed the statements of the implication of a vote for or against the issue and may include comments as to whether the statements clearly explain the implications of a vote. If statements of the implication of a vote for or against a measure have not been provided, the attorney general shall provide the statements with his statement of the general purpose of the issue. Statements of the implication of a vote for or against a ballot issue shall be no more than 25 words and shall be in simple language clearly explaining the meaning of a vote for the issue or a vote against the issue. Such statements shall be placed beside the diagram provided for the marking of the ballot similar to the following example:

FOR extending the right to vote to persons 18 years of age.

AGAINST extending the right to vote to persons 18 years of age.

(6) In the case of an act referred to the people or a constitutional amendment proposed by the legislature, the secretary of state shall prepare a statement setting forth the vote by which the issue passed each house of the legislature. The secretary of state shall file an official copy of his statement with the attorney general's statement on the issue in the official records of his office.

History: En. 37-127 by Sec. 13, Ch. 342, L. 1977.

37-128. Voter information pamphlet. (1) (a) The secretary of state shall prepare for printing a voter information pamphlet containing the following information for each ballot issue to be voted on at an election, as applicable:

- (i) title and complete text of the issue;
- (ii) statement of the secretary of state;
- (iii) statement of the attorney general;
- (iv) the form in which the issue will appear on the ballot;

- (v) arguments advocating approval and rejection of the issue; and
- (vi) rebuttal arguments.

(b) The secretary of state may arrange the information in the order which seems most appropriate, but the information for all issues in the pamphlet shall be presented in the same order.

(2) The arguments advocating approval or rejection of the ballot issue and rebuttal arguments shall be submitted to the secretary of state by committees appointed as provided in this subsection:

(a) The committee advocating approval of an act referred to the people or a constitutional amendment proposed by the legislature or an act referred to the people by referendum petition shall be composed of one senator known to favor the measure, appointed by the president of the senate; one representative known to favor the measure, appointed by the speaker of the house of representatives; and one member who need not be a member of the legislature, appointed by the first two members.

(b) The committee advocating rejection of a ballot issue referred to the people or proposed by the legislature shall be composed of one senator appointed by the president of the senate; one representative appointed by the speaker of the house of representatives; and one member who need not be a member of the legislature, appointed by the first two members. Whenever possible, the members shall be known to have opposed the issue.

(c) A three-member committee advocating approval of a ballot issue proposed by any type of initiative petition or advocating rejection of any ballot issue that is a legislative act referred to the people by referendum petition shall be appointed by the chairman of the organization that was first on record with the commissioner of campaign finances and practices as a proponent of the petition.

(d) A committee advocating rejection of a ballot issue proposed by any type of initiative petition shall be composed of five members. The governor, attorney general, president of the senate, and speaker of the house of representatives shall each appoint one member, and the fifth member shall be appointed by the first four members. All members shall be known to favor rejection of the issue.

History: En. 37-128 by Sec. 14, Ch. 342, L. 1977.

37-129. Time for making appointments—chairman. (1) Appointments to committees advocating approval or rejection of an act referred to the people or a constitutional amendment proposed by the legislature shall be filed with the secretary of state no later than 4 months before the election at which the ballot issue will be voted on by the people.

(2) Appointments to committees advocating approval or rejection of a ballot measure referred to the people by referendum petition or proposed by any type of initiative petition shall be filed with the secretary of state no later than 10 days after the measure is certified to the governor. At the same time the certification of the sufficiency of a petition is made to the governor, the secretary of state shall notify all persons responsible for appointing members of committees advocating approval or rejection

of the issue of the date by which such appointments must be filed in his office.

(3). The appointee of the president of the senate is the chairman of any committee to which that officer makes an appointment. The appointing authority for other committees shall name a chairman at the time the appointments are made.

History: En. 37-129 by Sec. 15, Ch. 342, L. 1977.

37-130. Expenses allowed. Each committee is entitled to receive funds for the preparation of arguments and expenses of members not to exceed \$150 for a three-member committee and \$250 for a five member committee. Itemized claims for actual expenses incurred, approved by a majority of the committee, shall be submitted to the secretary of state for payment from funds appropriated for that purpose.

History: En. 37-130 by Sec. 16, Ch. 342, L. 1977.

37-131. Limitation on length of argument advocating approval or rejection—time of filing. An argument advocating approval or rejection of a ballot issue is limited to 500 words and shall be filed, in typewritten form, with the secretary of state no later than 30 days following the date by which the appointment of the committee was required to be filed with the secretary of state. In no case, however, may an argument be submitted for filing later than 70 days before the election at which the issue will be voted on by the people. A majority of the committee responsible for preparation must approve and sign each argument filed. Separate signed letters of approval of an argument may be filed with the secretary of state by members of a committee if necessary to meet the filing deadline.

History: En. 37-131 by Sec. 17, Ch. 342, L. 1977.

37-132. Rebuttal arguments. The secretary of state shall provide copies of the arguments advocating approval or rejection of a ballot issue to the members of the adversary committee no later than 1 day following the filing of both the approval and rejection arguments for the issue in his office. The committees may prepare rebuttal arguments no longer than 250 words that shall be filed, in typewritten form, with the secretary of state no later than 10 days after the deadline for filing the original arguments. Discussion in the rebuttal argument must be confined to the subject matter raised in the argument being rebutted. The rebuttal argument shall be approved and signed by a majority of the committee responsible for its preparation. Separate signed letters of approval may be submitted in the same manner as for the original arguments.

History: En. 37-132 by Sec. 18, Ch. 342, L. 1977.

37-133. Rejection of improper arguments—responsibility of author for content. (1) The secretary of state shall reject, with the approval of the

attorney general, an argument or other matter held to contain obscene, vulgar, profane, scandalous, libelous, or defamatory matter; any language that in any way incites, counsels, promotes, or advocates hatred, abuse, violence, or hostility toward, or that tends to cast ridicule or shame upon, a group of persons by reason of race, color, religion, or sex; or any matter not allowed to be sent through the mail. Such arguments may not be filed or printed in the voter information pamphlet.

(2) Nothing in this act relieves an author of any argument from civil or criminal responsibility for statements contained in an argument printed in the voter information pamphlet.

History: En. 37-133 by Sec. 19, Ch. 342, L. 1977.

37-134. Printing and distribution of voter information pamphlet. (1) The secretary of state shall arrange with the department of administration by requisition for the printing and delivery of a voter information pamphlet for all ballot issues to be submitted to the people at least 90 days before the election at which they will be submitted. The requisition shall include a delivery list providing for shipment of the required number of pamphlets to each county and to the secretary of state.

(2) The secretary of state shall estimate the number of copies necessary to furnish one copy to every voter in each county and provide for an extra supply of the pamphlets in his office in determining the number of voter pamphlets to be ordered in the requisition.

(3) The department of administration shall call for bids and contract with the lowest bidder for the printing and delivery of the voter information pamphlet. The contract shall require completion of printing and shipment, as specified on the delivery list, of the voter information pamphlets by not later than 30 days before the election at which the ballot issues will be voted on by the people.

(4) The county official responsible for voter registration in each county shall mail one copy of the voter information pamphlet to each registered voter of the county no later than 2 weeks after the pamphlets are received from the printer.

(5) Ten copies of the voter information pamphlet shall be available at each precinct for use by any voter wishing to read the explanatory information and complete text before voting on the ballot issues.

History: En. 37-134 by Sec. 20, Ch. 342, L. 1977.

37-135. Secretary of state to certify ballot form. (1) The secretary of state shall furnish to the official of each county responsible for preparation and printing of the ballots, at the same time as he certifies the names of the persons who are candidates for offices to be filled at the election, a certified copy of the form in which each ballot issue to be voted on by the people at that election is to appear on the ballot. Unless otherwise provided in the legislative act or petition placing the issue on the ballot, the secretary of state shall list for each issue the number, the method of placement on the ballot, the title, and the statements of the implication

of a vote for or against the issue that are to be placed beside the diagram for marking the ballot. The secretary of state shall use for each ballot issue the title of the legislative act, legislative constitutional proposal, or ballot issue proposed by any type of initiative petition unless that title exceeds 100 words. A title of 100 words or less for the ballot shall be provided by the legislature or the organization circulating the petition if the official title exceeds 100 words. Following the number of the ballot issue, the secretary of state shall include one of the following statements to identify why the issue has been placed on the ballot:

- (a) an act referred by the legislature;
- (b) an amendment to the constitution proposed by the legislature;
- (c) an act of the legislature referred by referendum petition; or
- (d) a law or constitutional amendment proposed by initiative petition.

(2) Each of the county officials responsible for the preparation and printing of the ballots shall print the ballot issues on the official ballot in the form and order in which the issues have been certified by the secretary of state. All ballot issues shall be placed on the official ballot prescribed by 23-3506, 23-3804, or 23-3904 unless specific written approval by the secretary of state for placing the ballot issues on a separate ballot is received by the official responsible for printing the ballot. The secretary of state may issue such approval only when the number of issues to be voted on at an election makes it impossible to print the entire ballot, including the ballot issues, on the official ballot as prescribed by 23-3506, 23-3804, or 23-3904.

History: En. 37-135 by Sec. 21, Ch. 342, L. 1977.

37-136. Determination of result of election. (1) The votes on ballot issues shall be counted, canvassed, and returned by the regular boards of judges, clerks, and officers as votes for candidates are counted, canvassed, and returned. The abstract of votes on ballot issues shall be prepared and returned to the secretary of state in the manner provided by 23-4015 for abstract of votes for state officers. The state board of canvassers shall proceed within 20 days after the election at which such ballot issues are voted upon and, at the same time as the votes for state officers are canvassed, canvass the votes given for each ballot issue. The secretary of state, as secretary of the board of state canvassers, shall prepare and file in his office a statement of the canvass giving the number and title of each issue, the whole number of votes cast in the state for and against each ballot issue, and the effective date of each ballot issue approved by a majority of those voting on the issue. The secretary of state shall transmit a certified copy of the statement of the canvass to the governor.

(2) The secretary of state shall send a certified copy of all ballot issues which have been approved by a majority of those voting on the issue and a copy of the statement of the canvass to the executive director of the legislative council at the same time he transmits a certified copy of the statement of the canvass to the governor.

History: En. 37-136 by Sec. 22, Ch. 342, L. 1977.

37-137. Effective date of initiative and referendum issues. (1) Unless the petition placing an initiative issue on the ballot states otherwise, an initiative issue approved by the people is effective on July 1 following approval.

(2) Unless the legislature provides otherwise, a constitutional amendment proposed by the legislature and approved by the people is effective on July 1 following approval.

(3) Unless specifically provided by the legislature in an act referred by it to the people or until suspended by a petition signed by at least 15% of the qualified electors in a majority of the legislative representative districts, an act referred to the people is in effect as provided by law until it is approved or rejected at the election. An act that is rejected is repealed effective the date the result of the canvass is filed by the secretary of state under 37-136. An act referred to the people that was in effect at the time of the election and is approved by the people remains in effect. An act that was suspended by a petition and is approved by the people is effective the date the result of the canvass is filed by the secretary of state under 37-136. An act referred by the legislature that contains an effective date following the election becomes effective on that date if approved by the people. An act that provides no effective date and whose substantive provisions were delayed by the legislature pending approval at an election and that is approved is effective July 1 following the election.

History: En. 37-137 by Sec. 23, Ch. 342, L. 1977.

37-138. Violations—penalties. A person who knowingly makes a false entry upon a petition or affidavit required by this chapter or who knowingly signs a petition to place the same issue on the ballot at the same election more than once is guilty of unsworn falsification or tampering with public records or information, as appropriate, and is punishable as provided in 94-7-204 or 94-7-209, as applicable.

History: En. 37-138 by Sec. 24, Ch. 342, L. 1977.

CHAPTER 2—INITIATED CONSTITUTIONAL AMENDMENTS AND CONVENTIONS

(Repealed—Section 29, Chapter 342, Laws of 1977)

37-201 to 37-203. Repealed.

Repeal (En. 37-201 to 37-203, Ch. 342, L. 1977), relating to initiated constitutional Sections 37-201 to 37-203 (Secs. 1 to 3, amendments and conventions, were repealed by Sec. 29, Ch. 342, Laws 1977. Ch. 35, L. 1973; Secs. 70, 71, Ch. 365, L.

CHAPTER 3—COUNTY INITIATIVE AND REFERENDUM

Section 37-301. Petition to initiate county resolution—adoption by board—submission to people—waiting period before re-enactment of resolution repealed by people.

37-302. Election at which initiative petition submitted.

37-303. Effective date of county commissioners' resolutions—appropriations—emergency measures.

37-304. Petition to refer commissioners' resolution to electors.

- 37-305. Election at which referred measure submitted—special election.
- 37-306. Special election ordered by commissioners—submission by commissioners at general election.
- 37-307. Issuance of proclamation—publication—posting.
- 37-308. Form of ballot—canvass of votes—proclamation of result.
- 37-309. Qualifications of electors.
- 37-310. Measures required to be submitted to electors.
- 37-311. Forms of petitions and proceedings.

37-301. Petition to initiate county resolution—adoption by board—submission to people—waiting period before re-enactment of resolution repealed by people. (1) Resolutions may be proposed by the legal voters of any county in this state, in the manner provided in this act. Fifteen per cent (15%) of the legal voters of any county may propose to the board of county commissioners a resolution on a subject within the legislative jurisdiction and powers of such county commissioners, or a resolution amending or repealing any prior resolution or resolutions. Petitions shall be filed with the county clerk. The county clerk shall present the same to the board at its first meeting next following the filing of the petition. The board may, within sixty (60) days after the presentation of the petition to the board, adopt the resolution as set forth in the petition. If the resolution proposed by the petition is passed without change, it shall not be submitted to the people, unless a petition for referendum demanding such submission is filed under the provisions of this act.

(2) If the board does not, within sixty (60) days, pass the resolution proposed in the petition, then the resolution proposed by the petition shall be submitted to the people. Before submitting such resolution to the people, the board may direct that a suit be brought in the district court in and for the county to determine whether the petition and ordinance are regular in form, and whether the ordinance so proposed would be valid and constitutional. If the board determines that a suit must be brought, the suit shall be filed within fifteen (15) days after presentation of the petition to the board. The procedure for judicial review shall be the same as that provided for the cities in section 11-1104 (4) and (5).

(3) If a resolution is repealed pursuant to a proposal initiated by the qualified electors of a county as provided in this act, the board of commissioners may not, within a period of two (2) years thereafter, re-enact such resolution or any resolution so similar thereto as not to be materially different therefrom. If during such two (2) year period the board enacts a resolution similar to the one repealed pursuant to initiative of the voters, a suit may be brought to determine whether the new resolution is a re-enactment without material change of the one so repealed. The same procedures set forth for cities shall apply to such suit and determination of the issues arising thereon. Nothing herein contained shall prevent exercise of the initiative herein provided for, at any time, to procure a re-enactment of a resolution repealed pursuant to initiative of the voters.

History: En. Sec. 1, Ch. 64, L. 1973;
amd. Sec. 1, Ch. 389, L. 1975.

and referendum to Montana counties; implementing article XI, section 8 of the Montana constitution of 1972.

Title of Act

An act to extend the powers of initiative

Amendments

The 1975 amendment inserted the third sentence in subsection (2).

Cross-References

Initiative and referendum in cities, secs. 11-1104 to 11-1114.

Local option initiative, sec. 4-1-206.

37-302. Election at which initiative petition submitted. Any resolution proposed by petition which is entitled to be submitted to the people, shall be voted on at the next regular election to be held in the county, unless the petition asks that the same be submitted at a special election, and such petition is signed by not less than fifteen per cent (15%) of the electors qualified to vote at the last preceding county election.

History: En. Sec. 2, Ch. 64, L. 1973.

37-303. Effective date of county commissioners' resolutions—appropriations—emergency measures. No resolution passed by the board of county commissioners shall become effective until thirty (30) days after its passage, except general appropriation resolutions providing for the ordinary and current expenses of the county, excepting also emergency measures, and in the case of emergency measures the emergency must be expressed in the preamble or in the body of the measure, and the measure must receive a two-thirds ($\frac{2}{3}$) vote of all the members of the board. Emergency resolutions shall include only such measures as are immediately necessary for the preservation of peace, health, and safety.

History: En. Sec. 3, Ch. 64, L. 1973.

37-304. Petition to refer commissioners' resolution to electors. During the thirty (30) days following the passage of any resolution, ten per cent (10%) of the qualified electors of the county may, by petition addressed to the board and filed with the county clerk, demand that such resolution, or any part or parts thereof, shall be submitted to the electors of the county.

History: En. Sec. 4, Ch. 64, L. 1973.

37-305. Election at which referred measure submitted—special election. Any measure on which a referendum is demanded under the provisions of this act shall be submitted to the electors of the county at the next county election provided the petition or petitions were filed with the county clerk at least thirty (30) days before such election. If such petition or petitions be signed by not less than fifteen per cent (15%) of the qualified electors of the county, the measure shall be submitted at a special election to be held for the purpose.

History: En. Sec. 5, Ch. 64, L. 1973.

37-306. Special election ordered by commissioners—submission by commissioners at general election. The board of county commissioners may in any case order a special election on a measure proposed by the initiative, or when a referendum is demanded, or upon any resolution passed by the board and may likewise submit to the electors, at a general election, any resolution passed by the board.

History: En. Sec. 6, Ch. 64, L. 1973.

37-307. Issuance of proclamation—publication—posting. Whenever a measure is ready for submission to the electors, the clerk of the county shall, in writing, notify the board, who shall issue a proclamation setting forth the measure and the date of the election. Said proclamation shall be published one (1) day each week for four (4) consecutive weeks in each daily newspaper in the county, if there be such, otherwise in the weekly newspaper published in the county. In case there is no weekly newspaper published, the proclamation and the measure shall be posted conspicuously throughout the county.

History: En. Sec. 7, Ch. 64, L. 1973.

37-308. Form of ballot—canvass of votes—proclamation of result. The question to be balloted upon by the electors shall be printed on the initiative or referendum ballot, and the form shall be that prescribed by law for questions submitted at state elections. The referendum or initiative ballots shall be counted, canvassed, and returned by the regular board of judges, clerks, and officers, as votes for candidates for office are counted, canvassed, and returned. The returns for the questions submitted by the voters of the county shall be on separate sheets, and returned to the county clerk. The returns shall be canvassed in the same manner as the returns of regular elections for county and federal officers. The board shall issue a proclamation, as soon as the result of the final canvass is known, giving the whole number of votes cast in the county for and against such measure, and it shall be published in like manner as other proclamations herein provided for. A measure accepted by the electors shall take effect five (5) days after the vote is officially announced.

History: En. Sec. 8, Ch. 64, L. 1973.

37-309. Qualifications of electors. The qualifications for voting on questions submitted to the electors are the same as those required for voting for county commissioners.

History: En. Sec. 9, Ch. 64, L. 1973.

37-310. Measures required to be submitted to electors. The provisions of this act regarding the referendum shall not apply to resolutions which are required by any other law of the state to be submitted to the voters or the electors or taxpayers of any county.

History: En. Sec. 10, Ch. 64, L. 1973.

37-311. Forms of petitions and proceedings. The form of petitions and the proceedings under this act shall conform as nearly as possible, with the necessary changes as to details, to the provisions of the laws of the state relating to the initiative and referendum, and be regulated by such laws, except as otherwise provided in this act.

History: En. Sec. 11, Ch. 64, L. 1973.

TITLE 38—INSANE AND FEEBLE-MINDED

- Chapter
1. The state hospital, 38-106.1, 38-110, 38-120, 38-121.
 2. Examination of persons mentally deranged—commitment, 38-212.
 5. Convalescent leave of patients, 38-506, 38-507.
 6. Eugenical sterilization law, Repealed—Section 1, Chapter 310, Laws of 1969.
 7. Alcoholism services center, Repealed—Section 15, Chapter 112, Laws of 1963; Section 101, Chapter 199, Laws of 1965.
 8. Montana state training school and hospital, Repealed—Section 10, Chapter 213, Laws of 1963; Section 82, Chapter 266, Laws of 1963; Section 101, Chapter 199, Laws of 1965.
 9. Leases of farm land for state hospital and state penitentiary authorized, Repealed—Section 82, Chapter 266, Laws of 1963.
 10. State department of mental hygiene, Repealed—Section 101, Chapter 199, Laws of 1965.
 12. Treatment of developmentally disabled, 38-1201 to 38-1233.
 13. Treatment of seriously mentally ill, 38-1301 to 38-1331.

CHAPTER 1—THE STATE HOSPITAL

- Section
- 38-106.1. Definitions.
 - 38-110. Maintenance of indigent patients on discharge.
 - 38-120. Receipt of nonresident person who is seriously mentally ill pending return to home state.
 - 38-121. Terminology changed.

38-101, 38-102. (1413) Repealed.

Repeal

These sections (Secs. 2260, 2261, Pol. C. 1895; Sec. 1, Ch. 57, L. 1913; Sec. 1, Ch. 76, L. 1943; Sec. 19, Ch. 266, L. 1963),

relating to the name and management of the state hospital, were repealed by Sec. 101, Ch. 199, Laws 1965.

38-103. (1414) Repealed.

Repeal

This section (Sec. 2, Ch. 57, L. 1913), enumerating the powers and duties of

the board of the Montana state hospital, was repealed by Sec. 82, Ch. 266, Laws 1963.

38-104. (1415) Repealed.

Repeal

This section (Sec. 3, Ch. 57, L. 1913; Sec. 1, Ch. 42, L. 1923; Sec. 1, Ch. 149, L. 1929; Sec. 1, Ch. 268, L. 1947; Sec. 20, Ch.

266, L. 1963), relating to the superintendent of the state hospital, was repealed by Sec. 101, Ch. 199, Laws 1965.

38-105, 38-106. (1416, 1417) Repealed.

Repeal

These sections (Secs. 4, 5, Ch. 57, L. 1913), relating to the superintendent and

other staff members of the Montana state hospital, were repealed by Sec. 82, Ch. 266, Laws 1963.

38-106.1. Definitions. Unless the context requires otherwise, in Title 38: (1) "Department" means the department of institutions provided for in Title 82A, chapter 10.

(2) "State hospital" means the Warm Springs state hospital.

History: En. 38-106.1 by Sec. 3, Ch. 120, L. 1974.

Title of Act

An act for the codification and general revision of the laws relating to the department of institutions.

38-107 to 38-109. (1418, 1419, 1421) **Repealed.**

Repeal

Sections 38-107 to 38-109 (Secs. 2280, 2281, 2283, Pol. C. 1895; Sec. 1, Ch. 165, L. 1943; Sec. 8, Ch. 213, L. 1963; Secs. 21 to 23, Ch. 266, L. 1963; Secs. 4 to 6, Ch.

120, L. 1974), relating to transfer of a patient to friends or to some other institution, and discharge of patients, were repealed by Sec. 38, Ch. 466, Laws of 1975.

38-110. Maintenance of indigent patients on discharge. Prior to the discharge of a patient from a mental health facility, the professional person in charge of the facility shall notify the welfare department of the county from which the patient was committed. The county welfare department shall at once ascertain whether the discharged patient is in financial need. If the patient is found to be in financial need, the county welfare department shall properly care for and maintain the discharged patient under the laws of this state relating to public assistance until the patient is able to care for himself or until another provision has been made for care of the patient.

History: En. Sec. 2, Ch. 165, L. 1943; amd. Sec. 24, Ch. 266, L. 1963; amd. Sec. 7, Ch. 120, L. 1974; amd. Sec. 32, Ch. 466, L. 1975; amd. Sec. 1, Ch. 37, L. 1977.

Amendments

The 1963 amendment deleted "in addition to the financial aid required by section 1422" after "Montana state hospital"; and substituted "the department" for "the board" in the same place.

The 1974 amendment substituted "state hospital" for "Montana state hospital"; and made minor changes in phraseology and punctuation.

The 1975 amendment substituted "Prior

to the discharge" for "Upon the discharge"; substituted "mental health facility" for "state hospital"; substituted "the professional person in charge of the facility shall notify" for "the department shall notify"; substituted "welfare department" for "board of public welfare" throughout the section; substituted "laws of this state relating to public welfare" for "Public Welfare Act" and made minor changes in punctuation and phraseology.

The 1977 amendment substituted "public assistance" for "public welfare" in the last sentence; and made a minor change in punctuation.

DECISIONS UNDER FORMER LAW

Opinion Required

The written opinion of the hospital medical board and not that of a ward doc-

tor was essential for the release of a patient. *Petition of Smith*, 145 M 567, 403 P 2d 604.

38-111. Repealed.

Repeal

This section (Sec. 3, Ch. 165, L. 1943; Sec. 1, Ch. 153, L. 1957), relating to the

medical examination of patients, was repealed by Sec. 82, Ch. 266, Laws 1963.

38-112 to 38-116. (1423 to 1427) **Repealed.**

Repeal

Sections 38-112 to 38-116 (Secs. 2285 to 2288, Pol. C. 1895), relating to patients'

postal rights, were repealed by Sec. 38, Ch. 466, Laws of 1975.

38-117. (1428) Repealed.**Repeal**

Section 38-117 (Sec. 2290, Pol. C. 1895),

relating to insane convicts, was repealed by Sec. 96, Ch. 120, Laws of 1974.

38-118. (1429) Repealed.**Repeal**

This section (Sec. 2291, Pol. C. 1895), relating to nonresident insane persons,

was repealed by Sec. 2, Ch. 198, Laws 1963 and by Sec. 10, Ch. 213, Laws 1963.

38-119. (1430) Repealed.**Repeal**

Section 38-119 (Sec. 2292, Pol. C. 1895; Sec. 25, Ch. 266, L. 1963), relating to

payment for care of nonindigent insane, was repealed by Sec. 96, Ch. 120, Laws of 1974.

38-120. Receipt of nonresident person who is seriously mentally ill pending return to home state. A person who is seriously mentally ill and not a resident of this state may be received into the state hospital for a period not to exceed 30 days pending return to the state of his residence.

History: En. Sec. 1, Ch. 198, L. 1963; amd. Sec. 8, Ch. 120, L. 1974; amd. Sec. 2, Ch. 37, L. 1977.

Title of Act

An act to permit reception of nonresident insane to state hospital pending return to state of residence and repealing section 38-118, Revised Codes of Montana, 1947.

hospital" for "Montana state hospital"; and made minor changes in phraseology.

The 1977 amendment substituted "A person who is seriously mentally ill" for "An insane person"; and made minor changes in phraseology, punctuation and style.

Repealing Clause

Section 2 of Ch. 198, Laws 1963 read "Section 38-118, R.C.M. 1947, is hereby repealed."

Amendments

The 1974 amendment substituted "state

38-121. Terminology changed. Any reference to the terms "insane" person, "incompetent" person, a person with a "mental disease or defect," persons "disordered in mind," persons "unable to handle their own affairs," persons "feeble-minded, moron, imbecile, idiot and mentally deranged," and all other like references in the Revised Codes of Montana, 1947, mean "of unsound mind."

History: En. Sec. 1, Ch. 376, L. 1973.

Title of Act

An act implementing article II, section 28, article IV, sections 2 and 4, and

article XII, section 3 (2) of the 1972 Montana constitution and H.B. 28 of this session providing the term "of unsound mind" to include other like terms in the Revised Codes of Montana, 1947.

CHAPTER 2—EXAMINATION OF PERSONS MENTALLY DERANGED —COMMITMENT

Section 38-212. Cost of examination and commitment.

38-201 to 38-208.3, 38-209. (1431 to 1439) Repealed.**Repeal**

Sections 38-201 to 38-208.3, 38-209 (Secs. 2300 to 2308, Pol. C. 1895; Secs. 1 to 5, pp. 163, 164, L. 1897; Secs. 1 to 5, Ch. 117, L. 1939; Secs. 1 to 3, Ch. 182, L. 1953; Sec. 1, Ch. 77, L. 1955; Sec. 1,

Ch. 92, L. 1957; Sec. 1, Ch. 127, L. 1957; Sec. 1, Ch. 181, L. 1957; Sec. 26, Ch. 266, L. 1963; Secs. 9 to 14, Ch. 120, L. 1974), relating to examination and commitment of mentally deranged persons, were repealed by Sec. 38, Ch. 466, Laws of 1975.

38-210. (1440) Repealed.**Repeal**

Section 38-210 (Sec. 2309, Pol. C. 1895; Sec. 6, p. 164, L. 1897; Sec. 6, Ch. 117, L. 1939; Sec. 2, Ch. 76, L. 1943; Sec. 231, Ch. 147, L. 1963; Sec. 15, Ch. 120,

L. 1974), relating to disposal of money found on insane person, was repealed by Sec. 53, Ch. 37, Laws 1977 and Sec. 12, Ch. 450, Laws 1977.

38-211. (1441) Repealed.**Repeal**

Section 38-211 (Sec. 2310, Pol. C. 1895; Sec. 1, Ch. 84, L. 1911; Sec. 7, Ch. 117, L. 1939; Sec. 1, Ch. 134, L. 1957), relating to

physicians' fees for examinations of insane persons, was repealed by Sec. 38, Ch. 466, Laws of 1975.

38-212. (1442) Cost of examination and commitment. The cost of the examination, committal, and taking a person who is seriously mentally ill to a mental health facility must be paid by the county in which he resides at the time he is adjudged to be seriously mentally ill. The sheriff must be allowed the actual expenses incurred in taking a person who is seriously mentally ill to the facility, as provided by section 16-2723 of this code.

History: En. Sec. 2311, Pol. C. 1895; re-en. Sec. 1145, Rev. C. 1907; re-en. Sec. 1442, R. C. M. 1921; amd. Sec. 33, Ch. 466, L. 1975. Cal. Pol. C. Sec. 2175.

Amendments

The 1975 amendment substituted "seriously mentally ill" for "insane"; substituted "mental health facility" for "asylum"; and made minor changes in phraseology.

38-213. (1443) Repealed.**Repeal**

Section 38-213 (Sec. 7, p. 164, L. 1897; Sec. 8, Ch. 117, L. 1939; Sec. 16, Ch. 120, L. 1974), relating to procedure for dissat-

isfied persons concerning commitment orders, was repealed by Sec. 38, Ch. 466, Laws of 1975.

38-214. (1444) Repealed.**Repeal**

This section (Sec. 8, p. 165, L. 1897; Sec. 9, Ch. 117, L. 1939; Sec. 3, Ch. 76, L. 1943; Sec. 1, Ch. 49, L. 1955; Sec. 1,

Ch. 131, L. 1959), relating to the expense of maintenance of inmates of the Montana state hospital, was repealed by Sec. 10, Ch. 213, Laws 1963.

CHAPTER 3—TRANSFER OF STATE HOSPITAL PATIENTS TO BOULDER RIVER SCHOOL AND HOSPITAL

38-301 to 38-303. (1444.1) Repealed.**Repeal**

Sections 38-301 to 38-303 (Secs. 1, 2, Ch. 10, L. 1943; Sec. 4, Ch. 76, L. 1943; Secs. 17 to 19, Ch. 120, L. 1974), relating

to transfer of patients to Boulder river school and hospital, and payment of expenses, were repealed by Sec. 35, Ch. 468, Laws of 1975.

38-304. Repealed.**Repeal**

This section (Sec. 3, Ch. 10, L. 1943), relating to the expense of clothing per-

sons transferred to the state training school, was repealed by Sec. 10, Ch. 213, Laws 1963.

CHAPTER 4—EXAMINATION AND COMMITMENT OF PERSON AS MENTALLY DERANGED BUT NOT DANGEROUS—VOLUNTARY APPLICATION FOR ADMISSION

38-401 to 38-405. Repealed.

Repeal

Sections 38-401 to 38-405 (Secs. 1 to 5, Ch. 157, L. 1943; Secs. 20 to 24, Ch. 120, L. 1974), relating to examination of men-

tally deranged persons, judges' orders, observation, and commitment or release, were repealed by Sec. 38, Ch. 466, Laws of 1975.

38-406. Repealed.

Repeal

Section 38-406 (Sec. 6, Ch. 157, L. 1943; Sec. 1, Ch. 33, L. 1953), relating to the procedure for voluntary application for

admission to state hospital for treatment of mental condition, was repealed by Sec. 3, Ch. 102, Laws 1969.

38-406.1. Repealed.

Repeal

Section 38-406.1 (Sec. 1, Ch. 102, L. 1969), relating to definitions pertaining

to voluntary admission for diagnosis and treatment of mental illness, was repealed by Sec. 96, Ch. 120, Laws of 1974.

38-406.2. Transferred and Repealed.

Compiler's Notes

Section 25, Ch. 120, Laws of 1974 re-numbered this section as sec. 38-408.1,

which was repealed by Sec. 38, Ch. 466, Laws of 1975.

38-407 to 38-408.1. Repealed.

Repeal

Sections 38-407 to 38-408.1 (Secs. 7, 8, Ch. 157, L. 1943; Sec. 2, Ch. 102, L. 1969; Secs. 25 to 27, Ch. 120, L. 1974), relating

to jury trials, the district clerk's duty, and sixty-day voluntary admissions, were repealed by Sec. 38, Ch. 466, Laws of 1975.

38-409. Repealed.

Repeal

This section (Sec. 9, Ch. 157, L. 1943), relating to investigations of the financial

worth of persons committed or admitted to the Montana state hospital, was repealed by Sec. 10, Ch. 213, Laws 1963.

38-410. Repealed.

Repeal

Section 38-410 (Sec. 1, Ch. 129, L. 1955), relating to the procedure for determining

financial ability of applicant for admission to state hospital, was repealed by Sec. 3, Ch. 102, Laws 1969.

38-411, 38-412. Repealed.

Repeal

These sections (Secs. 2, 3, Ch. 129, L. 1955), relating to the charges for care and maintenance of persons voluntarily

admitted to the Montana state hospital, were repealed by Sec. 10, Ch. 213, Laws 1963.

CHAPTER 5—CONVALESCENT LEAVE OF PATIENTS

Section 38-506. Support of patient conditionally released.

38-507. Clothing for patient on conditional release or discharged patient.

38-502 to 38-505. Repealed.**Repeal**

Sections 38-502 to 38-505 (Secs. 2 to 5, Ch. 145, L. 1941; Secs. 1 to 4, Ch. 152, L. 1957; Secs. 27 to 29, Ch. 266, L. 1963; Secs. 28 to 31, Ch. 120, L. 1974), relating

to convalescent leave of Warm Springs state hospital patients, termination of leaves, and reports to the superintendent, were repealed by Sec. 38, Ch. 466, Laws of 1975.

38-506. Support of patient conditionally released. When a mental health facility conditionally releases a patient committed to its care, it is not liable for his support while conditionally released. Liability devolves upon the legal guardian, parent, or person under whose care the patient is placed when conditionally released or upon any other person legally liable for his support. The public welfare officials of the county where the patient resides or is found are responsible for providing relief and care for a conditionally released patient who is unable to maintain himself or who is unable to secure support from the person under whose care he was placed on convalescent leave, like any other person in need of relief and care, under the public assistance laws.

History: En. Sec. 6, Ch. 145, L. 1941; amd. Sec. 1, Ch. 149, L. 1953; amd. Sec. 5, Ch. 152, L. 1957; amd. Sec. 32, Ch. 120, L. 1974; amd. Sec. 34, Ch. 466, L. 1975; amd. Sec. 3, Ch. 37, L. 1977.

Amendments

The 1974 amendment substituted "state hospital" for "Montana state hospital" throughout the section; and made minor changes in phraseology, punctuation and style.

The 1975 amendment substituted "men-

tal health facility" for "state hospital" near the beginning of the section; substituted references to conditional release of a patient for references to placing a patient on convalescent leave; deleted a third sentence and a former subsection (2), for which see parent volume and 1974 amendment note; and made minor changes in style and phraseology.

The 1977 amendment substituted "public assistance laws" for "public welfare laws" at the end of the section; and made minor changes in punctuation.

38-507. Clothing for patient on conditional release or discharged patient. A patient may not be discharged or conditionally released from a mental health facility without suitable clothing adapted to the season in which he is discharged.

History: En. Sec. 7, Ch. 145, L. 1941; amd. Sec. 6, Ch. 152, L. 1957; amd. Sec. 33, Ch. 120, L. 1974; amd. Sec. 35, Ch. 466, L. 1975.

Amendments

The 1974 amendment substituted "state

hospital" for "Montana state hospital"; and made minor changes in phraseology.

The 1975 amendment deleted "or inmate" after "patient"; substituted "conditionally released" for "placed on convalescent leave"; and substituted "mental health facility" for "state hospital."

CHAPTER 6—EUGENICAL STERILIZATION LAW

(Repealed—Section 1, Chapter 310, Laws of 1969)

38-601 to 38-608. (1444.1 to 1444.8) Repealed.**Repeal**

Sections 38-601 to 38-608 (Secs. 1 to 8, Ch. 164, L. 1923), known as the Eugenical

Sterilization Law, were repealed by Sec. 1, Ch. 310, Laws 1969, effective March 11, 1969.

CHAPTER 7—ALCOHOLISM SERVICES CENTER

(Repealed—Section 15, Chapter 112, Laws of 1963; Section 101, Chapter 199, Laws of 1965)

38-701 to 38-711. (1445 to 1455) Repealed.**Repeal**

These sections (Secs. 1, 2, 4 to 12, Ch. 139, L. 1911; Secs. 1, 2, Ch. 130, L. 1955) relating to the state hospital for inebriates, were repealed by Sec. 15, Ch. 112, Laws

1963. Section 38-702 was also repealed by Sec. 82, Ch. 266, Laws 1963, and sections 38-707 and 38-708 were also repealed by Sec. 10, Ch. 213, Laws 1963.

38-712 to 38-724. Repealed.**Repeal**

These sections (Secs. 1 to 13, Ch. 112, L. 1963), relating to the alcoholism serv-

ices center, were repealed by Sec. 101, Ch. 199, Laws 1965.

CHAPTER 8—MONTANA STATE TRAINING SCHOOL AND HOSPITAL

(Repealed—Section 10, Chapter 213, Laws of 1963; Section 82, Chapter 266, Laws of 1963 and Section 101, Chapter 199, Laws of 1965)

38-801. Repealed.**Repeal**

This section (Sec. 1, Ch. 183, L. 1943; Sec. 1, Ch. 37, L. 1959), relating to the

establishment of the Montana state training school and hospital, was repealed by Sec. 82, Ch. 266, Laws 1963.

38-802. Repealed.**Repeal**

This section (Sec. 2, Ch. 183, L. 1943; Sec. 54, Ch. 266, L. 1963), describing the

purposes of the state training school and hospital, was repealed by Sec. 101, Ch. 199, Laws 1965.

38-803. Repealed.**Repeal**

This section (Sec. 3, Ch. 183, L. 1943), relating to the powers and duties of the

state board of education, was repealed by Sec. 82, Ch. 266, Laws 1963.

38-804 to 38-807. Repealed.**Repeal**

These sections (Secs. 4 to 7, Ch. 183, L. 1943; Secs. 55, 56, Ch. 266, L. 1963), relating to the powers of the superin-

tendent and to admissions to the state training school and hospital, were repealed by Sec. 101, Ch. 199, Laws 1965.

38-808, 38-809. Repealed.**Repeal**

These sections (Secs. 8, 9, Ch. 183, L. 1943; Sec. 1, Ch. 186, L. 1953; Sec. 1,

Ch. 73, L. 1959), relating to payment of expenses by inmates or their parents, were repealed by Sec. 10, Ch. 213, Laws 1963.

38-809.1. Repealed.**Repeal**

This section (Sec. 2, Ch. 73, L. 1959), relating to county investigation of the financial condition of persons responsible

for the expense of maintenance of inmates of the school, was repealed by Sec. 10, Ch. 213, Laws 1963.

38-810, 38-811. Repealed.**Repeal**

These sections (Secs. 10, 11, Ch. 183, L. 1943), relating to the procedure for

commitment to the state training school and hospital, were repealed by Sec. 101, Ch. 199, Laws 1965.

38-812 INSANE AND FEEBLE-MINDED

38-812. Repealed.

Repeal

This section (Sec. 12, Ch. 183, L. 1943; Sec. 2, Ch. 186, L. 1953; Sec. 3, Ch. 73, L.

1959), relating to orders for support of inmates of the school, was repealed by Sec. 10, Ch. 213, Laws 1963.

38-813 to 38-816. Repealed.

Repeal

These sections (Secs. 13 to 16, Ch. 183, L. 1943; Sec. 9, Ch. 213, L. 1963), relating to admission to and discharge and trans-

fer from the state training school and hospital, were repealed by Sec. 101, Ch. 199, Laws 1965.

38-817, 38-818. Repealed.

Repeal

These sections (Secs. 17, 18, Ch. 183, L. 1943), relating to the executive board of the training school, and containing a

repeal of early laws pertaining to the school, were repealed by Sec. 82, Ch. 266, Laws 1963.

38-819. Repealed.

Repeal

This section (Sec. 1, Ch. 11, L. 1943), relating to the transfer of inmates from

the state training school to the state hospital, was repealed by Sec. 101, Ch. 199, Laws 1965.

CHAPTER 9—LEASES OF FARM LAND FOR STATE HOSPITAL AND
STATE PENITENTIARY AUTHORIZED

(Repealed—Section 82, Chapter 266, Laws of 1963)

38-901, 38-902. Repealed.

Repeal

These sections (Secs. 1, 2, Ch. 209, L. 1943), relating to leases of farm land for

the state hospital and state prison, were repealed by Sec. 82, Ch. 266, Laws 1963.

CHAPTER 10—STATE DEPARTMENT OF MENTAL HYGIENE

(Repealed—Section 101, Chapter 199, Laws of 1965)

38-1001 to 38-1003. Repealed.

Repeal

These sections (Secs. 1 to 3, Ch. 103, L. 1947; Sec. 30, Ch. 266, L. 1963), establish-

ing a state department of mental hygiene, were repealed by Sec. 101, Ch. 199, Laws 1965.

CHAPTER 11—HOME FOR SENILE MEN AND WOMEN

38-1101. Repealed.

Repeal

This section (Sec. 6, Ch. 206, L. 1949; Sec. 57, Ch. 266, L. 1963), defining terms

for purposes of the chapter, was repealed by Sec. 101, Ch. 199, Laws 1965.

38-1106. Repealed.

Repeal

This section (Sec. 11, Ch. 206, L. 1949; Sec. 2, Ch. 230, L. 1959), relating to the

maintenance of inmates of the home for senile men and women, was repealed by Sec. 101, Ch. 199, Laws 1965.

38-1108 to 38-1112. Repealed.**Repeal**

These sections (Secs. 13 to 17, Ch. 206, L. 1949; Sec. 3, Ch. 230, L. 1959; Sec. 58, Ch. 266, L. 1963), relating to commitment,

transfer and release of inmates of the home for senile men and women, were repealed by Sec. 101, Ch. 199, Laws 1965.

CHAPTER 12—TREATMENT OF DEVELOPMENTALLY DISABLED

Section	38-1201.	Purpose.
	38-1202.	Definitions.
	38-1203.	Rights—waiver.
	38-1204.	Assistance of professional person.
	38-1205.	Petition for involuntary treatment.
	38-1206.	Action on petition.
	38-1207.	Recommendation—hearing on certain treatment.
	38-1208.	Recommendation to residential facility.
	38-1209.	Admission to residential facility.
	38-1210.	Venue for hearing.
	38-1211.	Appeal.
	38-1212.	Choice of professional person.
	38-1213.	Professional person to attend hearing.
	38-1214.	Social summary.
	38-1215.	Limitation on who takes treatment.
	38-1216.	Emergency admission.
	38-1217.	Denial of legal rights.
	38-1218.	Placement in a nonstate facility.
	38-1219.	Fingerprinting.
	38-1220.	Photographs.
	38-1221.	Rights while in a residential facility.
	38-1222.	Right to habilitation.
	38-1223.	Maintenance of records.
	38-1224.	Training for resident care workers.
	38-1225.	Abuse of residents prohibited.
	38-1226.	Medication for residents.
	38-1227.	Hazardous treatment—physical restraint.
	38-1228.	Experimental research.
	38-1229.	Resident labor.
	38-1230.	Evaluation of residents.
	38-1231.	Residential institution to meet standards.
	38-1232.	Mental disabilities board of visitors—duties.
	38-1233.	Transfer of person to residential facility.

38-1201. Purpose. The purpose of this act is:

(1) to secure for each person who may be developmentally disabled such treatment and habilitation as will be suited to the needs of the person, and to assure that such treatment and habilitation are skillfully and humanely administered with full respect for the person's dignity and personal integrity;

(2) to accomplish this goal whenever possible in a community-based setting;

(3) to accomplish this goal in an institutionalized setting only when less restrictive alternatives are unavailable or inadequate and only when a person is so severely disabled as to require institutionalized care; and

(4) to assure that due process of law is accorded any person coming under the provisions of this act.

History: En. 38-1201 by Sec. 1, Ch. 468, L. 1975.

habilitation and human rights of the developmentally disabled; and repealing sections 38-301 through 38-303, and 80-2303 through 80-2309, and 80-2312, R. C. M. 1947.

Title of Act

An act to provide for the identification,

38-1202. Definitions. As used in this chapter the following definitions apply:

(1) "Board" means the mental disabilities board of visitors created by this act.

(2) "Community-based facilities" or "community-based services" includes those services and facilities which are available for the evaluation, treatment and habilitation of the developmentally disabled in a community setting, including but not limited to, outpatient facilities, special education services, group homes, foster homes, day-care facilities, sheltered workshops, and other community-based services and facilities.

(3) "Court" means a district court of the state of Montana.

(4) "Developmentally disabled" means suffering from disabilities attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically handicapping condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals, which condition has continued or can be expected to continue indefinitely and constitutes a substantial handicap of such individuals.

(5) "Habilitation" means the process by which a person who is developmentally disabled is assisted to acquire and maintain those like skills which enable him to cope more effectively with the demands of his own person and environment and to raise the level of his physical, mental, and social efficiency. Habilitation includes but is not limited to formal, structured education and treatment.

(6) "Next of kin" includes but need not be limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(7) "Professional person" means:

(a) a medical doctor; or

(b) a person trained in the field of developmental disabilities and certified by the department of institutions or the department of social and rehabilitation services in accordance with standards of professional licensing boards, federal regulations, and the joint commissions on accreditation of hospitals.

(8) "Resident" means a person admitted to a residential facility for a course of evaluation, treatment, or habilitation.

(9) "Residential facility" or "facility" means any residential hospital or hospital and school which exists for the purpose of evaluating, treating, and habilitating the developmentally disabled on an inpatient basis, including the Boulder River school and hospital and the Eastmont training center. The term does not include a group home, foster home, or a halfway house. A correctional facility or a facility for the treatment of the mentally ill shall not be a "residential facility" within the meaning of this act.

(10) "Respondent" means a person alleged in a petition filed pursuant to this act to be developmentally disabled and in need of developmental disability services.

(11) "Responsible person" means any person willing and able to assume responsibility for a person who is developmentally disabled or alleged

to be developmentally disabled. Whenever in any proceeding under this act the court believes that a conflict of interest may exist between a person who is developmentally disabled or alleged to be developmentally disabled and his parents or guardian or that the parents or guardian are unable to protect the interests of such person or whenever there is no parent or guardian, the court shall appoint a responsible person to protect the interests of the person who is developmentally disabled or alleged to be developmentally disabled. Only one person shall at any one time be the responsible person within the meaning of this act. In appointing a responsible person, the court shall consider the preference of the respondent or patient. The court may at any time, for good cause shown, change its designation of who is the responsible person.

(12) "Seriously developmentally disabled" means developmentally disabled due to developmental or physical disability or a combination of both rendering a person unable to function in a community-based setting and which has resulted in self-inflicted injury or injury to others, or the imminent threat thereof; or which has deprived the person afflicted of the ability to protect his life or health.

History: En. 38-1202 by Sec. 2, Ch. 468, L. 1975; amd. Sec. 4, Ch. 37, L. 1977; amd. Sec. 1, Ch. 568, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 37 and once by Ch. 568. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 37, Laws of 1977, made minor changes in phraseology, punctuation and style.

Chapter 568, Laws of 1977, substituted "chapter" for "act" at the end of the introductory paragraph; and added "and which has resulted in self-inflicted injury or injury to others, or the imminent threat thereof; or which has deprived the person afflicted of the ability to protect his life or health" at the end of subdivision (12).

38-1203. Rights—waiver. (1) Any person subject to emergency admittance to a residential facility, to examination or evaluation by a professional person, or to any hearing held pursuant to this act shall have all the rights accorded to a person subject to involuntary commitment proceedings under the laws of this state relating to involuntary commitment of the seriously mentally ill.

(2) In addition, the parents or guardian of any person alleged to be developmentally disabled and in need of developmental disabilities services have the right:

- (a) to be present at any hearings held pursuant to this act;
 - (b) to be represented by counsel in any hearing;
 - (c) to offer evidence and cross-examine witnesses in any hearing;
- and
- (d) to have the respondent be examined by a professional person of their choice when such professional person is reasonably available, unless the person so chosen is objected to by the respondent or by a responsible person appointed by the court.

(3) A person may waive his procedural rights provided that the waiver is knowingly and intentionally made. The right to counsel in a hearing

held pursuant to section 38-1206 may not be waived. The right to habilitation provided for in this act may not be waived.

(4) In the case of a person who has been admitted to a residential facility for up to thirty (30) days of evaluation and treatment, or who, pursuant to the recommendation of a professional person, may be admitted to a residential facility for an extended course of habilitation, a waiver of rights can be knowingly and intentionally made only with the concurrence of the person's counsel, if any, his parents or guardian, and the responsible person appointed by the court, if any.

(5) In the case of a minor, the waiver of rights can be knowingly and intentionally made:

(a) when the minor is under the age of twelve (12), by the parents of the minor with the concurrence of the responsible person, if any;

(b) when the minor is over the age of twelve (12), by the minor and his parents;

(c) when the minor is over the age of twelve (12) and the minor and his parents do not agree, the minor can make an effective waiver of his rights only with the advice of counsel

If the court believes that there may be a conflict of interest between a minor and his parents or guardian, the court may appoint a responsible person or guardian ad litem for the minor.

History: En. 38-1203 by Sec. 3, Ch. 468, L. 1975.

38-1204. Assistance of professional person. (1) The parents or guardian of any person alleged to be developmentally disabled or the person himself may at any time request the assistance of a professional person in determining whether the person is developmentally disabled, the extent of such disability, and the most appropriate course of treatment, habilitation and education for the person alleged to be developmentally disabled.

(2) Whenever the parents or guardian of a person alleged to be developmentally disabled or the person himself request a course of evaluation and treatment, they shall ascertain, with the professional person who undertakes the case, the least restrictive means of evaluating and treating the person alleged to be developmentally disabled. Evaluation and treatment in a residential facility shall take place only upon certification by the professional person in charge of the case that adequate community-based facilities are not available reasonably near the place of residence of the person alleged to be developmentally disabled. Residential evaluation and treatment shall not be for more than thirty (30) days without subsequent proceedings before the court.

History: En. 38-1204 by Sec. 4, Ch. 468, L. 1975.

38-1205. Petition for involuntary treatment. (1) Any person who believes that there is a person who is developmentally disabled and in need of developmental disability services may report the situation to a profes-

sional person. If the professional person believes from the facts given to him that the person may be developmentally disabled and in need of developmental disability services, he shall contact the parents or guardian of the person alleged to be developmentally disabled or the person himself. If any of the persons so contacted refuse to cooperate with the professional person and if the professional person believes from all the circumstances of the case that the person may be developmentally disabled and in need of developmental disability services, he shall request the county attorney to file a petition alleging that there is a person in the county who is developmentally disabled and in need of developmental disability services.

(2) The petition shall contain:

(a) the name and address of the professional person and any other person requesting the petition and their interest in the case;

(b) the name and address of the respondent;

(c) the name and address of the parents or guardian of the respondent and of any other person believed to be legally responsible for the care, support, and maintenance of the respondent;

(d) the name and address of the respondent's next of kin, to the extent known;

(e) the name and address of any person whom the county attorney believes might be willing and able to be appointed responsible person; and

(f) a statement of the rights of the respondent and his parents or guardian which shall be in conspicuous print and identified by a suitable heading.

(3) Upon presentation to the court by the county attorney, the court shall immediately consider the petition with or without a hearing to determine if there is probable cause to believe that the respondent is developmentally disabled and in need of evaluation and treatment. If the court finds no such probable cause, it shall dismiss the petition. If the court finds that probable cause does exist, it shall direct a professional person to examine the respondent and to make an inquiry concerning the circumstances of the case. Such examination shall not exceed 4 hours in length. If probable cause is found, the court may appoint a responsible person other than the respondent's parents or guardian to protect the interests of the respondent. The responsible person shall be notified as soon as possible that a petition has been filed. Notice of the petition and the finding of probable cause shall be mailed or delivered to the respondent and to all other persons named in the petition and to any person who would have been named in the petition had his name, address, and relationship to the respondent been known at the time.

(4) When the professional person first contacts the respondent, before he begins any examination, he shall give the respondent a copy of the petition and explain to the respondent the nature of the proceeding and his rights as set forth in the petition. If the respondent is incapable of understanding the explanation and proceeding, the professional person shall give the petition and make the explanation to the parents or guardian of the respondent. Before making any inquiry of the parents or guardian

of the respondent, the professional person shall give them a copy of the petition and explain the nature of the proceeding and their rights as set forth in the petition.

History: En. 38-1205 by Sec. 5, Ch. 468, Amendments
L. 1975; amd. Sec. 5, Ch. 37, L. 1977.

The 1977 amendment made minor changes in phraseology and punctuation.

38-1206. Action on petition. (1) If the professional person, based on his examination and inquiry, determines that the respondent is not developmentally disabled or is not in need of developmental disability services, he shall report this finding in writing to the court and the petition shall be dismissed. If the professional person concludes that the respondent is developmentally disabled and in need of developmental disability services, he shall report this conclusion to the court in writing together with his recommendations for evaluation and treatment. The report shall include an explanation of the basis on which the professional person has reached his conclusion and shall include a description of any tests or evaluation devices he has employed. If the professional person's recommendation is for further evaluation and treatment, notice of this recommendation shall be sent to the respondent, his parents or guardian, the next of kin, the responsible person appointed by the court, if any, and any attorney representing the respondent or his parents or guardian. If no responsible person has yet been appointed, the court may appoint one at this time.

(2) If the respondent, his parents or guardian, the responsible person, if any, or counsel for any party requests a hearing on the recommendation, the court shall set a time and place for hearing. The hearing shall be before the court without a jury. The rules of civil procedure shall apply.

(3) Prior to any hearing held pursuant to this section, the court shall appoint counsel to represent the respondent if the respondent has not retained independent counsel. The parents (or guardian) shall be informed of their right to counsel, and if they are indigent, the court shall on their request appoint counsel for them. In no case may the same attorney represent the respondent and his parents or guardian.

(4) If the hearing is waived or if the court finds, after hearing, that the respondent is developmentally disabled and in need of further evaluation and treatment, the court shall order that the respondent undergo such evaluation and treatment. Evaluation and treatment ordered pursuant to this subsection may not be for more than 30 days. It shall take place in the least restrictive environment in which the necessary evaluation and treatment can be accomplished. Evaluation and treatment in a residential facility may be ordered only if the necessary evaluation and treatment cannot be accomplished through the use of community-based facilities.

History: En. 38-1206 by Sec. 6, Ch. 468, L. 1975; amd. Sec. 6, Ch. 37, L. 1977. Amendments

The 1977 amendment made minor changes in phraseology, punctuation and style.

38-1207. Recommendation—hearing on certain treatment. (1) If as a result of the evaluation and treatment ordered by the court, the professional person in charge of the case recommends a course of habilitation

and treatment at the community level making use of community and regional based services for the developmentally disabled, he shall report his recommendation in writing to the court. The recommendation shall be accompanied by a written report indicating the factual basis for the recommendation and describing any tests or evaluation devices which the professional person has employed in evaluating the respondent. If this course of treatment and habilitation is agreed to by the parents, guardian, person evaluated, responsible person, if any, and counsel for the person evaluated, if any, then this community-based course of treatment shall be commenced as soon as practicable, and the petition shall be dismissed.

(2) If any of the parties listed in the preceding paragraph object to the community-based course of treatment, they may request the court to conduct a hearing on the matter. If a responsible person has not yet been appointed, the court may appoint a responsible person prior to the hearing. Notice of the time, date and place of the hearing shall be mailed or delivered to all of the parties listed in the preceding paragraph, and to the attorney for the parents or guardian, if any. The hearing shall be held before the court without a jury. The rules of civil procedure shall apply. If the court finds that the respondent is developmentally disabled and in need of community-based developmental disabilities services, it shall order that the respondent undertake a community-based course of treatment and habilitation.

History: En. 38-1207 by Sec. 7, Ch. 468, L. 1975.

38-1208. Recommendation to residential facility. (1) If as a result of the evaluation and treatment, either agreed to by the parents, guardian, or the person himself pursuant to 38-1204 or ordered by the court, the professional person in charge of the case concludes that the person evaluated is seriously developmentally disabled and recommends that treatment and habilitation be had in a residential facility on an extended basis, the professional person shall file his written recommendation and report with the court and request that the court order the admission. The report shall include the factual basis for the recommendation and shall describe any tests or evaluation devices which have been employed in evaluating the patient. If no responsible person has yet been appointed, the court may appoint one at this time. If there is no parent or guardian, the court shall appoint a responsible person. At the request of the respondent, his parents or guardian, or the responsible person, the court shall appoint counsel for the respondent. If the parents (or guardian) are indigent and if they request it, the court shall appoint counsel for the parents or guardian. Notice of the recommendation shall be mailed or delivered to the respondent, his parents or guardian, the responsible person, next of kin, if known, and the attorney for the respondent, if any, and for the parents or guardian, if any.

(2) The respondent, his parents or guardian, the responsible person, or the attorney for any party may request that a hearing be had on the recommendation. If a hearing is requested, the court shall mail or deliver notice of the date, time, and place of the hearing to each of the parties

listed at the beginning of this subsection. The hearing shall be to the court without jury. The rules of civil procedure shall apply.

(3) If the court finds that the respondent is seriously developmentally disabled and that available community-based services are not adequate to protect the life and physical safety of the person and others or to provide appropriate treatment and habilitation, it shall order the respondent admitted to a residential facility for an extended course of treatment and habilitation. If the court finds that the respondent is developmentally disabled, in need of developmental disability services, and that available community-based services are adequate to protect the life and physical safety of the person and others and to provide appropriate treatment and habilitation, it shall order the respondent to undertake a community-based course of treatment and habilitation. If the court finds that the respondent is not developmentally disabled or is not in need of developmental disability services, it shall dismiss the request.

(4) If none of the parties notified of the recommendation request a hearing, the court may issue an order authorizing the person to be admitted to the residential facility for an extended period of treatment and habilitation or the court may initiate its own inquiry as to whether the order should be granted. The court may refuse to authorize admission of a person to a residential facility for an extended period of treatment and habilitation if such admission is not in the best interests of the person.

(5) If any person is admitted to a residential facility for an extended course of habilitation without a hearing and if subsequent to such admission one of the parties who could have requested a hearing learns that an alternative course of treatment is available which is more suitable to the needs of the resident, the party may request the professional person in charge of the resident to release the resident to the alternative if it is a community-based alternative or transfer the resident to the alternative if it is a residential alternative. Any such transfer or release shall comply with the requirements of 38-1209. If the professional person in charge of the resident refuses to authorize the release or transfer, then the party may petition the court for a hearing to determine whether the present residential alternative should be continued. The hearing shall comply with the procedures set forth in subsection (2) of this section.

History: En. 38-1208 by Sec. 8, Ch. 468, L. 1975; amd. Sec. 7, Ch. 37, L. 1977; amd. Sec. 2, Ch. 568, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 37 and once by Ch. 568. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 37, Laws of 1977, made minor

changes in phraseology, punctuation and style.

Chapter 568, Laws of 1977, inserted "to protect the life and physical safety of the person and others or to provide appropriate treatment and habilitation" in the first sentence of subsection (3); and inserted "to protect the life and physical safety of the person and others and to provide appropriate treatment and habilitation" in the second sentence of subsection (3).

38-1209. Admission to residential facility. (1) No person shall be admitted to a residential facility for longer than thirty (30) days except on

approval of the court. Whenever a person is admitted to a residential facility for longer than thirty (30) days, the court may appoint a person other than the parents or guardian to act as responsible person for the resident. If there is no parent or guardian, the court shall appoint a responsible person.

(2) The court order approving the admission shall specify the maximum period of time for which the person is admitted to the residential facility. In no case shall this maximum period exceed one (1) year.

(3) If at any time during the period for which a person is admitted to a residential facility for an extended period of habilitation and treatment, the professional person in charge of the resident decides that there exist sufficient community-based alternatives to provide adequate treatment and habilitation for the resident and adequate protection of the life and physical safety of the resident and others, or that it is in the best interests of the resident that he be transferred to another residential facility, then he may release the resident to such community-based alternative or transfer the resident to the other residential facility no less than fifteen (15) days after sending notice of the proposed release or transfer to the resident, his parents or guardian, the attorney who most recently represented the resident, if any, the responsible person appointed by the court, if any, and the court which ordered the admission. If the resident has been found unfit to proceed to trial notice shall be sent to the court which found the resident unfit to proceed to trial and to the county attorney and the attorney who represented the resident at the time the resident was found unfit to proceed to trial. If any of the parties so notified objects to the release or transfer, they may petition the court for a hearing to determine whether the release or transfer should be allowed. The hearing shall comply with the procedures set forth in section 38-1208. The court may on its own initiative inquire concerning the propriety of the release or transfer. Nothing in this subsection shall prevent the transfer of a resident to a hospital or other medical facility for necessary medical treatment, or emergency transfer of a resident to a mental health facility, provided such emergency transfer complies with the statutory requirements for emergency detention of the mentally ill. Within twenty-four (24) hours of an emergency medical or psychiatric transfer, notice shall be given to the parents or guardian of the resident, the responsible person appointed by the court, if any, and the court.

(4) If the professional person in charge of the resident determines that the admission to the residential facility should continue beyond the period specified in the court order, he shall, at least fifteen (15) days before the end of the period set out in the court order, send written notice of his recommendation and request for renewal of the order to the court which issued the order, the resident, his parents or guardian, the next of kin, if known, the attorney who most recently represented the resident, if any, and the responsible person appointed by the court, if any. The recommendation and request shall be accompanied by a written report which shall describe the habilitation plan which has been undertaken for the resident and the future habilitation plan which is anticipated by the professional person.

(5) If any person so notified requests a hearing, the court shall set a time and place for the hearing and shall mail or deliver notice to all of the persons informed of the recommendation. The hearing shall be conducted in the manner set out in section 38-1208. If the court finds that the residential admission is still justified, it may order continuation of the admission to that residential facility or transfer of the resident to a different residential facility. If the court finds that the resident is still in need of developmental disabilities services but does not require residential treatment, it shall order an appropriate course of community-based habilitation, or, if all parties are willing for the resident to participate in a community-based program of habilitation, it shall dismiss the petition. If the need for developmental disabilities services no longer exists, the court shall dismiss the petition. The court shall not order continuation of admission to a residential facility which does not have an individualized habilitation plan for the resident. In its order, the court shall make findings of fact on which its order is based. The court may on its own initiative inquire concerning the suitability of continuing an admission to a residential facility.

History: En. 38-1209 by Sec. 9, Ch. 468, L. 1975; amd. Sec. 3, Ch. 568, L. 1977.

Amendments

The 1977 amendment inserted "and ade-

quate protection of the life and physical safety of the resident and others" in the first sentence of subsection (3); and inserted the second sentence of subsection (3).

38-1210. Venue for hearing. Hearings held pursuant to this act shall be held in the district court for the district where the respondent resides. Except that at the request of any party, or the professional person who must be present at the hearing, a hearing may be held in the district court for the district where the respondent is undergoing evaluation, treatment or habilitation in a residential facility, or is undergoing community-based evaluation, treatment or habilitation. The cost of any hearing held pursuant to this act shall be borne by the county where the respondent resides.

History: En. 38-1210 by Sec. 10, Ch. 468, L. 1975.

38-1211. Appeal. Any order issued by a court after a hearing held pursuant to any provision of this act may be appealed to the Montana supreme court in the same manner as for civil appeals generally.

History: En. 38-1211 by Sec. 11, Ch. 468, L. 1975.

38-1212. Choice of professional person. Whenever evaluation by a professional person is ordered by a court pursuant to any provision of this act, the person being evaluated, his parents or guardian shall have a reasonable choice of a professional person qualified to perform such service.

History: En. 38-1212 by Sec. 12, Ch. 468, L. 1975.

38-1213. Professional person to attend hearing. In any hearing held pursuant to this act which involves consideration of the recommendation

and report of a professional person, the professional person who made the recommendation and report shall be present at the hearing and subject to cross-examination.

History: En. 38-1213 by Sec. 13, Ch. 468, L. 1975.

38-1214. Social summary. In any hearing held pursuant to this act the court may request the county welfare department to prepare a social summary of the respondent for use by the court.

History: En. 38-1214 by Sec. 14, Ch. 468, L. 1975.

38-1215. Limitation on who takes treatment. No person who has reached the age of majority shall be compelled against his will to undertake a course of treatment and habilitation solely because he is developmentally disabled, but only if such disability causes him to be unable to protect his life and health or to protect the life or safety of others.

History: En. 38-1215 by Sec. 15, Ch. 468, L. 1975; amd. Sec. 4, Ch. 568, L. 1977.

Amendments

The 1977 amendment added "or to protect the life or safety of others" at the end of the section.

38-1216. Emergency admission. The parents, guardian, the person himself, or a professional person may admit a person believed to be developmentally disabled to a residential facility on an emergency basis when necessary to protect the person or others from death or serious bodily harm. However, if requested by the parents, guardian or the person admitted on an emergency basis, a petition as set out in section 38-1205 shall be filed on the next judicial day by the county attorney of the county where the person resides. If a petition is filed, the professional person assigned by the court to conduct the examination and inquiry shall report back to the court on the next judicial day following the filing of the petition. Once a petition is filed, continued detention in the residential facility shall be allowed only on order of the court when necessary to protect the respondent or others from death or serious bodily harm. In no case shall an emergency admission to a residential facility continue for longer than thirty (30) days without subsequent proceedings before the court.

History: En. 38-1216 by Sec. 16, Ch. 468, L. 1975; amd. Sec. 5, Ch. 568, L. 1977.

Amendments

The 1977 amendment inserted "or others" near the end of the first and fourth sentences.

38-1217. Denial of legal rights. (1) Unless specifically stated in an order by the court, a person admitted to a residential facility for an extended course of habilitation shall not forfeit any legal right or suffer any legal disability by reason of the provisions of this act except in so far as it may be necessary to detain the person for habilitation, evaluation or care.

(2) Whenever any person is admitted to a residential facility for a period of more than thirty (30) days, for an extended course of habilitation, the court ordering the admission may make an order stating specifi-

cally any legal rights which are denied the respondent and any legal disabilities which are imposed on him. As part of its order, the court may appoint a person to act as conservator of the respondent's property. Any conservatorship created pursuant to this section shall terminate upon the conclusion of the admission if not sooner terminated by the court. A conservatorship or guardianship extending beyond the period of the admission may not be created except according to the procedures set forth under Montana law for the appointment of conservators and guardians generally.

(3) Any person who has been admitted to a residential facility pursuant to this act shall be automatically restored upon the termination of the admission to all of his civil and legal rights which may have been lost when he was admitted. This subsection shall not affect, however, any guardianship or conservatorship created independently of the admission proceedings, according to the provisions of Montana law relating to the appointment of conservators and guardians generally. Any person who leaves a residential facility following a period of evaluation and habilitation shall be given a written statement setting forth the substance of this subsection.

(4) Any person admitted to a residential facility prior to the effective date of this act shall enjoy all the rights and privileges of a person admitted after the effective date of this act.

History: En. 38-1217 by Sec. 17, Ch. 468, L. 1975.

38-1218. Placement in a nonstate facility. (1) If a person is admitted to a residential facility under the provisions of this act and is eligible for hospital care, treatment or habilitation by an agency of the United States, and if a certificate of notification from such agency showing that facilities are available and that the person is eligible for care or treatment therein is received, the court may order the person to be placed in the custody of the agency for hospitalization. The chief officer of any hospital or residential facility operated by the agency and in which the person is admitted shall, with respect to the person, be vested with the same powers as the superintendent of the Boulder River school and hospital with respect to detention, custody, transfer and release of the person. Jurisdiction shall be retained in the appropriate courts of this state to inquire into the mental condition of persons so admitted, and to determine the necessity for continuance of their admission.

(2) Consistent with other provisions of this act, a person admitted to a residential facility under this act for a period more than thirty (30) days may be committed by the court to the custody of friends or next of kin residing outside the state or transferred to a residential facility located outside the state, if the out-of-state facility agrees to receive the person, provided, however that no such commitment or transfer shall be for a longer period of time than is permitted within the state. If the person is indigent, the expense of supporting him in an out-of-state facility and the expense of transportation shall be borne by the state of Montana.

(3) The transfer of persons admitted to a residential facility under the provisions of this act out of Montana or under the laws of another jurisdiction into Montana shall be governed by the provisions of the interstate compact on mental health.

History: En. 38-1218 by Sec. 18, Ch. 468, L. 1975.

38-1219. **Fingerprinting.** No person admitted to or in a residential facility shall be fingerprinted unless required by other provisions of law.

History: En. 38-1219 by Sec. 19, Ch. 468, L. 1975.

38-1220. **Photographs.** (1) A person admitted to a residential facility may be photographed upon admission for identification and the administrative purposes of the facility. Such photographs shall be confidential and shall not be released by the facility except pursuant to court order.

(2) No other nonmedical or nonhabilitative photographs shall be taken or used without consent of the resident's parents or guardian or the responsible person appointed by the court.

History: En. 38-1220 by Sec. 20, Ch. 468, L. 1975.

38-1221. **Rights while in a residential facility.** Persons admitted to a residential facility for a period of habilitation shall enjoy the following rights:

(1) Residents shall have a right to dignity, privacy and humane care.

(2) Residents shall be entitled to send and receive sealed mail. Moreover, it shall be the duty of the facility to foster the exercise of this right by furnishing the necessary materials and assistance.

(3) Residents shall have the same rights and access to private telephone communication as patients at any public hospital, except to the extent that a professional person responsible for formulation of a particular resident's habilitation plan writes an order imposing special restrictions and explains the reasons for any such restrictions. The written order must be renewed monthly if any restrictions are to be continued. Residents shall have an unrestricted right to visitation, except to the extent that a professional person responsible for formulation of a particular resident's habilitation plan writes an order imposing special restrictions and explains the reasons for any such restrictions. The written order must be renewed monthly if any restrictions are to be continued.

(4) Residents shall have a right to receive suitable educational services regardless of chronological age, degree of retardation or accompanying disabilities or handicaps.

(5) Each resident shall have an adequate allowance of neat, clean, suitably fitting and seasonable clothing. Except when a particular kind of clothing is required because of a particular condition, residents shall have the opportunity to select from various types of neat, clean, and seasonable clothing. Such clothing shall be considered the resident's throughout his

stay in the institution. Clothing both in amount and type shall make it possible for residents to go out of doors in inclement weather, to go for trips or visits appropriately dressed, and to make a normal appearance in the community. The facility shall make provision for the adequate and regular laundering of the residents' clothing.

(6) Each resident shall have the right to keep and use his own personal possessions except in so far as such clothes or personal possessions may be determined to be dangerous, either to himself or to others, by a professional person.

(7) A resident has a right to a humane physical environment within the residential facilities. These facilities shall be designed to make a positive contribution to the efficient attainment of the habilitation goals of the resident. To accomplish this purpose:

(a) Regular housekeeping and maintenance procedures which will ensure that the facility is maintained in a safe, clean and attractive condition shall be developed and implemented.

(b) Pursuant to an established routine maintenance and repair program, the physical plant shall be kept in a continuous state of good repair and operation so as to ensure the health, comfort, safety and well-being of the residents and so as not to impede in any manner the habilitation programs of the residents.

(c) The physical facilities must meet all fire and safety standards established by the state and locality. In addition, the facility shall meet such provisions of the life safety code of the national fire protection association as are applicable to it.

(d) There must be special facilities for nonambulatory residents to assure their safety and comfort, including special fittings on toilets and wheelchairs. Appropriate provision shall be made to permit nonambulatory residents to communicate their needs to staff.

(8) Residents shall have a right to receive prompt and adequate medical treatment for any physical ailments and for the prevention of any illness or disability. Such medical treatment shall meet standards of medical practice in the community.

(9) Corporal punishment shall not be permitted.

(10) The opportunity for religious worship shall be accorded to each resident who desires such worship. Provisions for religious worship shall be made available to all residents on a nondiscriminatory basis. No individual shall be compelled to engage in any religious activities.

(11) Residents shall have a right to a nourishing, well-balanced diet. The diet for residents shall provide at a minimum the recommended daily dietary allowance as developed by the national academy of sciences. Provisions shall be made for special therapeutic diets and for substitutes at the request of the resident, or his parents or guardian or next of kin, or the responsible person appointed by the court, in accordance with the religious requirements of any resident's faith. Denial of a nutritionally adequate diet shall not be used as punishment.

(12) Residents shall have a right to regular physical exercise several times a week. It shall be the duty of the facility to provide both indoor

and outdoor facilities and equipment for such exercise. Residents shall have a right to be outdoors daily in the absence of contrary medical considerations.

(13) Residents shall have a right, under appropriate supervision, to suitable opportunities for the interaction with members of the opposite sex, except where a professional person responsible for the formulation of a particular resident's habilitation plan writes an order to the contrary and explains the reasons therefor. The order must be renewed monthly if the restriction is to be continued.

History: En. 38-1221 by Sec. 21, Ch. 468, L. 1975.

DECISIONS UNDER FORMER LAW

Constitutional Requirements—Right to Treatment

Where patient was confined to mental institution without treatment for 15 years when he was neither dangerous to himself nor to others and was capable of surviving safely in freedom by himself or with

help of willing and responsible family members or friends, the state violated patient's constitutional right to freedom by keeping him in mental institution against his will. *O'Connor v. Donaldson*, 422 US 563, 45 L. Ed 2d 396, 95 S Ct 2486.

38-1222. Right to habilitation. (1) Persons admitted to residential facilities shall have a right to habilitation, including medical treatment, education, and care suited to their needs regardless of age, degree of retardation, or handicapping condition. Each resident has a right to a habilitation program which will maximize his human abilities and enhance his ability to cope with his environment. Every residential facility shall recognize that each resident, regardless of ability or status, is entitled to develop and realize his fullest potential. The facility shall implement the principle of normalization so that each resident may live as normally as possible.

(2) Residents shall have a right to the least restrictive conditions necessary to achieve the purposes of habilitation. To this end, the facility shall make every attempt to move residents from:

- (a) more to less structured living;
- (b) larger to smaller facilities;
- (c) larger to smaller living units;
- (d) group to individual residence;
- (e) segregated from the community to integrated into the community living;
- (f) dependent to independent living.

(3) Within 30 days of his admission to a residential facility, each resident shall have an evaluation by appropriate specialists for programming purposes.

(4) Each resident shall have an individualized habilitation plan formulated by the facility. This plan shall be developed by appropriate professional persons and implemented as soon as possible but no later than 14 days after the resident's admission to the facility. An interim program of habilitation, based on the preadmission evaluation conducted pursuant to

this act, shall commence promptly upon the resident's admission. Each individualized habilitation plan shall contain:

(a) a statement of the nature of the specific limitations and specific needs of the resident;

(b) a description of intermediate and long-range habilitation goals with a projected timetable for their attainment;

(c) a statement of and an explanation for the plan of habilitation for achieving these intermediate and long-range goals;

(d) a statement of the least restrictive setting for habilitation necessary to achieve the habilitation goals of the resident;

(e) a specification of the professional persons and other staff members who are responsible for the particular resident's attaining these habilitation goals;

(f) criteria for release to less restrictive settings for habilitation, including criteria for discharge and a projected date for discharge.

(5) As part of his habilitation plan, each resident shall have an individualized post institutionalization plan. This plan shall be developed by a professional person who shall begin preparation of such plan upon the resident's admission to the institution and shall complete such plan as soon as practicable. The parents or guardian or next of kin of the resident, the responsible person appointed by the court, if any, and the resident, if able to give informed consent, shall be consulted in the development of such plan and shall be informed of the content of such plan.

(6) In the interests of continuity of care, one professional person shall whenever possible be responsible for supervising the implementation of the habilitation plan, integrating the various aspects of the habilitation program, and recording the resident's progress as measured by objective indicators. This professional person shall also be responsible for ensuring that the resident is released when appropriate to a less restrictive habilitation setting.

(7) The habilitation plan shall be continuously reviewed by the professional person responsible for supervising the implementation of the plan and shall be modified if necessary. In addition, 6 months after admission and at least annually thereafter, each resident shall receive a comprehensive psychological, social, educational, and medical diagnosis and evaluation and his habilitation plan shall be reviewed by an interdisciplinary team of no less than two professional persons and such resident care workers as are directly involved in his habilitation and care. A habilitation plan shall be reviewed monthly.

(8) Each resident discharged to the community shall have a program of transitional habilitation assistance.

(9) The professional person in charge of the residential facility shall report in writing to the parents or guardian of the resident or the responsible person at least every 6 months on the resident's educational, vocational, and living skills progress and medical condition. Such report shall also state any appropriate habilitation program which has not been afforded to the resident because of inadequate habilitation resources.

(10) The parents or guardian of each resident or the responsible person appointed by the court shall promptly upon the resident's admission receive a written copy of all the above standards for adequate habilitation. Each resident, if the resident is able to comprehend, shall promptly upon his admission be orally informed in clear language of the above standards and, where appropriate, be provided with a written copy.

History: En. 38-1222 by Sec. 22, Ch. 468, L. 1975; amd. Sec. 8, Ch. 37, L. 1977.

Amendments

The 1977 amendment made minor changes in phraseology, punctuation and style.

38-1223. Maintenance of records. Complete records for each resident shall be maintained and shall be readily available to professional persons and to the resident care workers who are directly involved with the particular resident and to the mental disabilities board of visitors. All information contained in a resident's records shall be considered privileged and confidential. The parents or guardian, the responsible person appointed by the court, and any person properly authorized in writing by the resident, if such resident is capable of giving informed consent, or by his parents or guardian or the responsible person, shall be permitted access to the resident's records. These records shall include:

- (1) identification data, including the resident's legal status;
- (2) the resident's history, including but not limited to:
 - (a) family data, educational background, and employment record;
 - (b) prior medical history, both physical and mental, including prior institutionalization;
- (3) the resident's grievances if any;
- (4) an inventory of the resident's life skills;
- (5) a record of each physical examination which describes the results of the examination;
- (6) a copy of the individual habilitation plan and any modifications thereto and an appropriate summary which will guide and assist the resident care workers in implementing the resident's program;
- (7) the findings made in periodic reviews of the habilitation plan which findings shall include an analysis of the successes and failures of the habilitation program and shall direct whatever modifications are necessary;
- (8) a copy of the post-institutionalization plan and any modifications thereto, and a summary of the steps that have been taken to implement that plan;
- (9) a medication history and status;
- (10) a summary of each significant contact by a professional person with a resident;
- (11) a summary of the resident's response to his program, prepared by a professional person involved in the resident's habilitation and recorded at least monthly. Such response, wherever possible, shall be scientifically documented;

(12) a monthly summary of the extent and nature of the resident's work activities and the effect of such activity upon the resident's progress along the habilitation plan;

(13) a signed order by a professional person for any physical restraints;

(14) a description of any extraordinary incident or accident in the facility involving the resident, to be entered by a staff member noting personal knowledge of the incident or accident or other source of information, including any reports of investigations of resident's mistreatment;

(15) a summary of family visits and contacts;

(16) a summary of attendance and leaves from the facility;

(17) a record of any seizures, illnesses, treatments thereof, and immunizations.

History: En. 38-1223 by Sec. 23, Ch. 468, L. 1975.

38-1224. Training for resident care workers. All resident care workers who have not had prior clinical experience in a residential facility for habilitation of the developmentally disabled shall have suitable orientation training. Staff members on all levels shall have suitable, regularly scheduled in-service training. Each resident care worker shall be under the direct professional supervision of a professional person.

History: En. 38-1224 by Sec. 24, Ch. 468, L. 1975.

38-1225. Abuse of residents prohibited. Every residential facility shall prohibit mistreatment, neglect or abuse in any form of any resident. Alleged violations shall be reported immediately to the professional person in charge of the facility and there shall be a written record that:

(1) each alleged violation has been thoroughly investigated and findings stated;

(2) the results of such investigation are reported to the professional person in charge of the facility within twenty-four (24) hours of the report of the incident. Such reports shall also be made to the mental disabilities board of visitors monthly and to the developmental disabilities advisory council at its next scheduled public meeting. Each facility shall cause a written statement of this policy to be posted in each cottage and building and circulated to all staff members.

History: En. 38-1225 by Sec. 25, Ch. 468, L. 1975.

38-1226. Medication for residents. Residents have a right to be free from unnecessary or excessive medication. No medication shall be administered unless at the written order of a physician. The professional person in charge of the facility and the attending physician shall be responsible for all medication given or administered to a resident. The use of medication shall not exceed standards of use that are advocated by the United States food and drug administration. Notation of each individual's medica-

tion shall be kept in his medical records. At least weekly an attending physician shall review the drug regimen of each patient under his care. All prescriptions shall be written with a termination date, which shall not exceed thirty (30) days. Medications shall not be used as punishment, for the convenience of staff, as a substitute for program, or in quantities that interfere with the resident's treatment program.

History: En. 38-1226 by Sec. 26, Ch. 468, L. 1975.

38-1227. Hazardous treatment — physical restraint. (1) Residents of a residential facility shall have a right not to be subjected to any unusual or hazardous treatment procedures without the express and informed consent of the resident, if the resident is able to give such consent, and of his parents or guardian or the responsible person appointed by the court, after opportunities for consultation with independent specialists and legal counsel. Such proposed procedures shall first have been reviewed and approved by the mental disabilities board of visitors before such consent shall be sought.

(2) Physical restraint shall be employed only when absolutely necessary to protect the resident from injury to himself or to prevent injury to others. Restraint shall not be employed as punishment, for the convenience of staff, or as a substitute for a habilitation program. Restraint shall be applied only if alternative techniques have failed and only if such restraint imposes the least possible restriction consistent with its purpose. Only a professional person may authorize the use of restraints. Orders for restraints by a professional person shall be in writing and shall not be in force for longer than twelve (12) hours. Whenever physical restraint is ordered suitable provision shall be made for the comfort and physical needs of the person restrained.

(3) Seclusion, defined as the placement of a resident alone in a locked room for nontherapeutic purposes, shall not be employed. Legitimate "time out" procedures may be utilized under close and direct professional supervision as a technique in behavior-shaping programs.

(4) Behavior modification programs involving the use of noxious or aversive stimuli shall be reviewed and approved by the mental disabilities board of visitors and shall be conducted only with the express and informed consent of the affected resident, if the resident is able to give such consent, and of his parents or guardian or the responsible person appointed by the court, after opportunities for consultation with independent specialists and with legal counsel. Such behavior modification programs shall be conducted only under the supervision of and in the presence of a professional person who has had proper training in such techniques.

(5) No resident shall be subjected to a behavior modification program which attempts to extinguish socially appropriate behavior or to develop new behavior patterns when such behavior modifications serve only institutional convenience.

(6) Electric shock devices shall be considered a research technique for the purpose of this act. Such devices shall only be used in extraordinary

circumstances to prevent self-mutilation leading to repeated and possibly permanent physical damage to the resident and only after alternative techniques have failed. The use of such devices shall be subject to the conditions prescribed by this act for experimental research generally and shall be used only under the direct and specific order of the professional person in charge of the residential facility.

History: En. 38-1227 by Sec. 27, Ch. 468, L. 1975.

38-1228. Experimental research. Residents of a residential facility shall have a right not to be subjected to experimental research without the express and informed consent of the resident, if the resident is able to give such consent, and of his parents or guardian or the responsible person appointed by the court after opportunities for consultation with independent specialists and with legal counsel. Such proposed research shall first have been reviewed and approved by the mental disabilities board of visitors before such consent shall be sought. Prior to such approval the board shall determine that such research complies with the principles of the statement on the use of human subjects for research of the American association on mental deficiency and with the principles for research involving human subjects required by the United States department of health, education and welfare for projects supported by that agency.

History: En. 38-1228 by Sec. 28, Ch. 468, L. 1975.

38-1229. Resident labor. The following rules shall govern resident labor:

(1) No resident shall be required to perform labor which involves the operation and maintenance of the facility or for which the facility is under contract with an outside organization. Privileges or release from the facility shall not be conditioned upon the performance of labor covered by this provision. Residents may voluntarily engage in such labor if the labor is compensated in accordance with the minimum wage laws of the Fair Labor Standards Act, 29 U.S.C. sec. 206, as amended.

(2) No resident shall be involved in the care (feeding, clothing, bathing), training or supervision of other residents unless he:

- (a) has volunteered;
- (b) has been specifically trained in the necessary skills;
- (c) has the humane judgment required for such activities;
- (d) is adequately supervised; and

(e) is reimbursed in accordance with the minimum wage laws of the Fair Labor Standards Act, 29 U.S.C. sec. 206, as amended.

(3) Residents may be required to perform vocational training tasks which do not involve the operation and maintenance of the facility, subject to a presumption that an assignment of longer than three (3) months to any task is not a training task, provided the specific task or any change in task assignment is:

(a) an integrated part of the resident's habilitation plan and approved as a habilitation activity by a professional person responsible for supervising the resident's habilitation;

(b) supervised by a staff member to oversee the habilitation aspects of the activity.

(4) Residents may voluntarily engage in habilitative labor at non-program hours for which the facility would otherwise have to pay an employee, provided the specific labor or any change in labor is:

(a) an integrated part of the resident's habilitation plan and approved as a habilitation activity by a professional person responsible for supervising the resident's habilitation;

(b) supervised by a staff member to oversee the habilitation aspects of the activity; and

(c) compensated in accordance with the minimum wage laws of the Fair Labor Standards Act, 29 U.S.C. sec. 206, as amended.

(5) If any resident performs habilitative labor which involves the operation and maintenance of a facility, but due to physical or mental disability is unable to perform the labor as efficiently as a person not so physically or mentally disabled, then the patient may be compensated at a rate which bears the same approximate relation to the statutory minimum wage as his ability to perform that particular job bears to the ability of a person not so afflicted.

(6) Residents may be required to perform tasks of a personal house-keeping nature such as the making of one's own bed.

(7) Deductions or payments for care and other charges shall not deprive a resident of a reasonable amount of the compensation received pursuant to this section for personal and incidental purchases and expenses.

(8) Staffing shall be sufficient so that the facility is not dependent upon the use of residents or volunteers for the care, maintenance or habilitation of other residents or for income-producing services. The facility shall formulate a written policy to protect the residents from exploitation when they are engaged in productive work.

History: En. 38-1229 by Sec. 29, Ch. 468, L. 1975.

38-1230. Evaluation of residents. Within one (1) year of the effective date of this act, each resident governed by the provisions of this act shall be evaluated as to his mental, emotional, social, and physical condition. Such evaluation or reevaluation shall be conducted by an interdisciplinary team of professional persons who shall use professionally recognized tests and examination procedures. Each resident's parents or guardian, next of kin or legal representative or the responsible person appointed by the court shall be contacted and his readiness to make provisions for the resident's care in the community shall be ascertained. Each resident shall be returned to his family, if adequately habilitated, or assigned to the least restrictive habilitation setting. Where necessary, the professional person in charge of the resident shall petition the court to appoint a responsible person.

History: En. 38-1230 by Sec. 30, Ch. 468, L. 1975.

38-1231. Residential institution to meet standards. No person shall be admitted to any publicly supported residential institution caring for developmentally disabled persons unless such institution meets the standards prescribed by this act.

History: En. 38-1231 by Sec. 31, Ch. 468, L. 1975.

38-1232. Mental disabilities board of visitors—duties. (1) The governor shall appoint a mental disabilities board of visitors. The board shall consist of five persons representing but not limited to consumers, doctors of medicine, and the behavioral sciences, at least three of whom may not be professional persons and at least one of whom shall be a representative of an organization concerned with the care and welfare of the developmentally disabled. No one may be a member of the board who is a full-time agent or employee of any department or agency of the state or residential facility affected by this act, except this prohibition does not affect any employee of a state college or university. If a board of similar title and structure is created in any act concerning the treatment of the mentally ill, then only one board shall be created to perform the functions of both and the board so created shall include at least one representative of an organization concerned with the care and welfare of the mentally ill and one representative of an organization concerned with the care and welfare of the mentally retarded or developmentally disabled.

(2) The mental disabilities board of visitors shall be an independent board of inquiry and review to assure that the treatment of all persons admitted to a residential facility is humane and decent and meets the requirements set forth in this act.

The board shall review all plans for experimental research or hazardous treatment procedures involving persons admitted to any residential facility to assure that the research project is humane and not unduly hazardous and that it complies with the principles of the statement on the use of human subjects for research of the American association on mental deficiency and with the principles for research involving human subjects required by the United States department of health, education and welfare. No experimental research project involving persons admitted to any residential facility affected by this act may be commenced unless it is approved by the mental disabilities board of visitors. The board shall investigate all cases of alleged mistreatment of a resident.

(3) The board shall, at least annually, inspect every residential facility which is providing a course of residential habilitation and treatment to any person pursuant to this act. The board shall inspect the physical plant, including residential, recreational, dining, and sanitary facilities. It shall visit all wards and treatment or habilitation areas. The board shall inquire concerning all habilitation programs being implemented by the institution.

(4) The board shall inspect the file of each person admitted to a residential facility pursuant to this act to insure that a habilitation plan exists and is being implemented. The board shall inquire concerning all use of restraints, isolation or other extraordinary measures.

(5) The board may assist any patient at a residential facility in resolving any grievance he may have concerning his admission or his course of treatment and habilitation in the facility.

(6) If the board believes that any facility is failing to comply with the provisions of this act in regard to its physical facilities or its treatment of any resident, it shall report its findings at once to the professional person in charge of the facility and the director of the department of institutions. If appropriate after waiting a reasonable time for a response from such professional person, the board may notify the parents or guardian of any patient involved, the next of kin, if known, the responsible person appointed by the court for any patient involved, and the district court which has jurisdiction over the facility.

(7) The mental disabilities board of visitors shall report annually to the governor and shall report to each session of the legislature concerning the status of the residential facilities and habilitation programs which it has inspected.

(8) The mental disabilities board of visitors shall be attached to the governor for administrative purposes. It may employ staff for the purpose of carrying out its duties as set out in this act.

History: En. 38-1232 by Sec. 32, Ch. 468, L. 1975; amd. Sec. 18, Ch. 546, L. 1977.

Amendments

The 1977 amendment inserted "representing but not limited to consumers, doctors of medicine, and the behavioral sciences" in the second sentence of subsection (1); inserted "full-time" before "agent" in the third sentence of subsection (1); substituted "any department or agency of the state" in the third sentence of subsection (1) for "the depart-

ment of institutions"; added the exception at the end of the third sentence of subsection (1); inserted the waiting period for notice to the patient's parents, guardian, next of kin, or responsible person appointed by the court and made such notice discretionary rather than mandatory in subsection (6); and made minor changes in phraseology and style.

Repealing Clause

Section 19 of Ch. 546, Laws 1977 read "Section 80-1908, R. C. M. 1947, is repealed."

38-1233. Transfer of person to residential facility. If any person is a patient in a mental health facility and the professional person in charge of the patient determines that the patient is suffering from a developmental disability rather than mental illness and should more properly be admitted to a residential facility, then the professional person shall commence proceedings consistent with the procedures set forth in this act for admissions generally to effect such admission.

History: En. 38-1233 by Sec. 33, Ch. 468, L. 1975.

Separability Clause

Section 34 of Ch. 468, Laws 1975 read "If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given

effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable."

Repealing Clause

Section 35 of Ch. 468, Laws 1975 read "Sections 80-2303 through 80-2309, 80-2312, and 38-301 through 38-303, R. C. M. 1947, are repealed."

CHAPTER 13—TREATMENT OF SERIOUSLY MENTALLY ILL

- Section 38-1301. Purpose of chapter.
 38-1302. Definitions.
 38-1303. Voluntary admission—cost of admission.
 38-1304. Rights and waiver of rights.
 38-1305. Petition alleging person as seriously mentally ill—contents and procedure.
 38-1306. Posttrial disposition—petition for extension.
 38-1307. Emergency situation—petition—detention.
 38-1308. Outpatient care—conditional release.
 38-1309. Right to counsel and appeal—examination of respondent—records.
 38-1310. Transfer or commitment to facility—procedure.
 38-1311. Appeal procedure.
 38-1312. Effect of act on persons currently judged mentally ill.
 38-1313. Civil and legal rights of person committed.
 38-1314. Transfer of person committed.
 38-1315. Fingerprinting prohibited.
 38-1316. Photographs permitted—confidential.
 38-1317. Rights of persons admitted to facility.
 38-1318. Patient labor—rules.
 38-1319. Medication for patients.
 38-1320. Physical restraint and isolation.
 38-1321. Research on patients—restrictions.
 38-1322. Treatment procedures—restrictions.
 38-1323. Professional person—qualifications.
 38-1324. Treatment plan for patient established.
 38-1325. Examination following commitment.
 38-1326. Care and treatment following release.
 38-1327. Treatment of children and young adults.
 38-1328. Records to be maintained.
 38-1329. Records to be confidential—exceptions.
 38-1330. Mental disabilities board of visitors—creation and responsibilities.
 38-1331. Statement of rights to be furnished and posted.

38-1301. Purpose of chapter. The purpose of this chapter is:

(1) to secure for each person who may be seriously mentally ill or suffering from a mental disorder such care and treatment as will be suited to the needs of the person, and to insure that such care and treatment are skillfully and humanely administered with full respect for the person's dignity and personal integrity;

(2) to accomplish this goal whenever possible in a community-based setting;

(3) to accomplish this goal in an institutionalized setting only when less restrictive alternatives are unavailable or inadequate and only when a person is so mentally ill as to require institutionalized care; and

(4) to assure that due process of law is accorded any person coming under the provisions of this chapter.

History: En. 38-1301 by Sec. 1, Ch. 466, L. 1975; amd. Sec. 1, Ch. 546, L. 1977.

Title of Act

An act to provide for determination and treatment of the seriously mentally ill and those suffering from mental disorders; amending sections 38-110, 38-212, 38-506, 38-507, and 80-2501; repealing sections 38-107, 38-108, 38-109, 38-112, 38-113, 38-114, 38-115, 38-116, 38-201, 38-202, 38-203, 38-204, 38-205, 38-206, 38-207, 38-208, 38-

208.1, 38-208.2, 38-208.3, 38-209, 38-211, 38-213, 38-401, 38-402, 38-403, 38-404, 38-405, 38-406, 38-406.1, 38-406.2, 38-407, 38-408, 38-408.1, 38-502, 38-503, 38-504, 38-505, and 64-112, R. C. M. 1947.

Amendments

The 1977 amendment substituted subdivision (2) for "to deprive a person of his liberty for purposes of treatment or care only when less restrictive alternatives are unavailable and only when his

safety or the safety of others is endangered, and to provide for due process of law when this is done"; added subdivisions (3) and (4); and made minor changes in phraseology and style.

38-1302. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the mental disabilities board of visitors created by this chapter.

(2) "Court" means any district court of the state of Montana.

(3) "Department" means the department of institutions provided for in Title 82A, chapter 10.

(4) "Emergency situation" means a situation in which any person is in imminent danger of death or serious bodily harm from the activity of a person who appears to be seriously mentally ill.

(5) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions.

(6) "Mental health facility" or "facility" means a public hospital or a licensed private hospital which is equipped and staffed to provide treatment for persons with mental disorders or a community mental health center or any mental health clinic or treatment center approved by the department. No correctional institution or facility or jail is a mental health facility within the meaning of this chapter.

(7) "Next of kin" shall include but need not be limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(8) "Patient" means a person committed by the court for treatment for any period of time.

(9) "Peace officer" means any sheriff, deputy sheriff, marshal, policeman, or other peace officer.

(10) "Professional person" means

(a) a medical doctor; or

(b) a person trained in the field of mental health and certified by the department in accordance with standards of professional licensing boards, federal regulations, and the joint commission on accreditation of hospitals.

(11) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional person.

(12) "Respondent" means a person alleged in a petition filed pursuant to this chapter to be seriously mentally ill.

(13) "Responsible person" means any person willing and able to assume responsibility for a seriously mentally ill person or person alleged to be seriously mentally ill, including next of kin, the person's conservator or legal guardian, if any, representatives of a charitable or religious organization, or any other person appointed by the court to perform the functions of a responsible person set out in this chapter. Only one person may at any one time be the responsible person within the meaning of this chapter. In appointing a responsible person, the court shall consider the preference of the respondent. The court may at any time for good cause shown change its designation of the responsible person.

(14) "Seriously mentally ill" means suffering from a mental disorder which has resulted in self-inflicted injury or injury to others or the imminent threat thereof or which has deprived the person afflicted of the ability to protect his life or health. No person may be involuntarily committed to a mental health facility or detained for evaluation and treatment because he is an epileptic, mentally deficient, mentally retarded, senile, or suffering from a mental disorder unless the condition causes him to be seriously mentally ill within the meaning of this chapter.

History: En. 38-1302 by Sec. 2, Ch. 466, L. 1975; amd. Sec. 9, Ch. 37, L. 1977; amd. Sec. 2, Ch. 546, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 37 and once by Ch. 546. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 37, Laws of 1977, added "provided for in Title 82A, chapter 10" at the end of subdivision (3); and made minor

changes in phraseology, punctuation and style.

Chapter 546, Laws of 1977, inserted "which is equipped and staffed to provide treatment for persons with mental disorders" in the first sentence of subsection (6); substituted "for treatment for any period of time" at the end of subdivision (8) for "to a seventy-two (72) hour evaluation or treatment or for a longer period"; inserted subdivision (11) defining "reasonable medical certainty"; redesignated former subdivisions (11) through (13) as (12) through (14); and made minor changes in phraseology, punctuation and style.

38-1303. Voluntary admission—cost of admission. (1) Nothing in this chapter may be construed in any way as limiting the right of any person to make voluntary application for admission at any time to any mental health facility or professional person. An application for admission to a mental health facility shall be in writing on a form prescribed by the facility and approved by the department. It is not valid unless it is approved by a professional person and a copy is given to the person voluntarily admitting himself. The form shall contain a statement of the rights of the person voluntarily applying for admission, as set out in this chapter, including the right to release.

(2) Any applicant who wishes to voluntarily apply for admission to the Montana state hospital shall first obtain certification from a professional person that the applicant is suffering from a mental disorder and that the facilities available to the mental health region in which the applicant resides are unable to provide adequate evaluation and treatment.

(3) An application for voluntary admission shall give the facility the right to detain the applicant for no more than 5 days, excluding weekends and holidays, past his written request for release.

(4) The cost of involuntarily committing a patient who is voluntarily admitted to a mental health facility at the time the involuntary proceedings are commenced shall be borne by the county of the patient's residence at the time of admission.

(5) The costs of transportation to a mental health facility under this section shall be provided by the welfare department of the county of the patient's residence. However, if protective proceedings under Title 91A, chapter 5, have been or are initiated with respect to the person, the welfare department may seek reimbursement. If no one else is available to transport him, the sheriff shall transport the person.

(6) Any person voluntarily entering or remaining in any mental health facility shall enjoy all the rights secured to a person involuntarily committed to the facility.

(7) Notwithstanding any other provision of law, a minor who is 16 years of age or older may consent to receive mental health services to be rendered by a facility or a person licensed to practice medicine or psychology in this state.

(8) Except as provided by this subsection, voluntary admission of a minor to a mental health facility for an in-patient course of treatment shall be for the same period of time as that for an adult. A minor voluntarily admitted shall have the right to be released within 5 days of his request as provided in 38-1303(3). The minor himself may make such request. Unless there has been a periodic review and a voluntary readmission consented to by the minor patient and his counsel, voluntary admission terminates at the expiration of 1 year. Counsel shall be appointed for the minor.

(9) If, in any voluntary admission for any period of time to a mental health facility, a minor fails to join in the consent of his parents or guardian to the voluntary admission, then the admission shall be treated as an involuntary commitment. Notice of the substance of this subsection and of the right to counsel shall be set forth in conspicuous type in a conspicuous location on any form or application used for the voluntary admission of a minor to a mental health facility. The notice shall be explained to the minor by the professional person approving the application.

History: En. 38-1303 by Sec. 3, Ch. 466, L. 1975; amd. Sec. 3, Ch. 546, L. 1977.

Amendments

The 1977 amendment deleted "of institutions" after "department" at the end of the second sentence of subsection (1); deleted "from the regional mental health director of his mental health region or if not reasonably available" after "certification" in subsection (2); inserted "excluding weekends and holidays" in subsection (3); deleted "the patient, his parents, guardian, or" before "the welfare department" in the first sentence of subsection

(5); added the last two sentences in subsection (5); inserted "Except as provided by this subsection" at the beginning of subsection (8); substituted "the same period of time as that for an adult" at the end of the first sentence of subsection (8) for "a period of no more than thirty (30) days"; deleted a former second sentence of subsection (8) which provided for the professional person in charge of a minor patient to bring involuntary commitment proceedings to commit the minor for more than thirty days; inserted the second and third sentences of subsection (8); and made minor changes in phraseology and style.

38-1304. Rights and waiver of rights. (1) Whenever a person is involuntarily detained, or is examined pursuant to 38-1305, the person shall be informed of his constitutional rights and his rights under this chapter. A person may waive his rights, or his rights may be waived by his counsel and responsible person acting together if a record is made of the reasons for the waiver. The right to counsel may not be waived. The right to treatment provided for in this chapter may not be waived.

(2) The right of the respondent to be physically present at a hearing may also be waived by his attorney and the responsible person with the concurrence of the professional person and the judge upon a finding supported by facts that:

(a) the presence of the respondent at hearing would be likely to seriously adversely affect his mental condition; and

(b) an alternative location for the hearing in surroundings familiar to the respondent would not prevent such adverse effects on his mental condition.

(3) (a) In the case of a minor, provided that a record is made of the reasons for the waiver, his rights may be waived by the mutual consent of his counsel and parents or guardian or guardian ad litem if there are no parents or guardian.

(b) If there is an apparent conflict of interest between a minor and his parents or guardian, the court shall appoint a guardian ad litem for him.

(4) In addition to any other rights which may be guaranteed by the constitution of the United States and of this state, by the laws of this state or by this chapter, any person who is involuntarily detained or against whom a petition is filed pursuant to this chapter has the following rights:

(a) the right to notice reasonably in advance of any hearing or other court proceeding concerning him;

(b) the right in any hearing to be present, to offer evidence, and to present witnesses in any proceeding concerning him;

(c) the right in any hearing to cross-examine witnesses;

(d) the right to be represented by counsel;

(e) the right to remain silent;

(f) the right in any hearing to be proceeded against according to the rules of evidence applicable to civil matters generally;

(g) the right to view and copy all petitions on file with the court concerning him;

(h) the right to be examined by a professional person of his choice when such professional person is reasonably available;

(i) the right to be dressed in his own clothes at any hearing held pursuant to this chapter; and

(j) the right to refuse any but lifesaving medication for up to 24 hours prior to any hearing held pursuant to this chapter.

(5) A person detained pursuant to this chapter shall be detained in the least restrictive environment required to protect the life and physical safety of the person detained or members of the public. Whenever possible, a person detained pursuant to this chapter shall be detained in a mental health facility and in the county of residence. No person may be detained in any hospital or other medical facility which is not a mental health facility unless such hospital or facility has agreed in writing to admit the person. A person may be detained in a jail or other correctional facility only if no mental health facility is available or if the available mental health facilities are inadequate to protect the person detained and the public. As soon as a mental health facility becomes available or the situation has changed sufficiently that an available mental health facility is adequate for

the protection of the person detained and the public, then the detained person shall be transferred from the jail or correctional facility to the mental health facility. A person detained prior to involuntary commitment may apply to the court for immediate relief with respect to the need for detention or the adequacy of the facility being utilized to detain.

History: En. 38-1304 by Sec. 4, Ch. 466, L. 1975; amd. Sec. 4, Ch. 546, L. 1977.

Amendments

The 1977 amendment deleted "by a professional person" after "examined" in the first sentence of subsection (1); deleted "or is notified that he will be the subject of a hearing pursuant to section 38-1305 or 38-1306" before "the person" in the first sentence of subsection (1); substituted the second sentence of subsection (1) for a sentence reading "A person may waive his procedural rights, provided that the waiver is knowingly and intentionally made"; deleted "in a hearing held pursuant to section 38-1306" after "counsel" in the third sentence of subsection

(1); deleted a sentence at the beginning of subsection (2) which provided that a person detained for 72 hours or more could only waive his rights with the concurrence of his attorney or the responsible person; inserted the record requirement in subdivision (3)(a); substituted the waiver by mutual consent in subdivision (3)(a) for waiver by the parents when the minor is under 12, by the minor and parents when the minor is over 12, and by the minor with advise of counsel where the minor is over 12 and the parents disagree; substituted "shall" in subdivision (3)(b) for "may"; added subsection (5); and made minor changes in phraseology and style.

38-1305. Petition alleging person as seriously mentally ill—contents and procedure. (1) The county attorney, upon the written request of any person, may file a petition with the court alleging that there is a person within the county who is seriously mentally ill and requesting that the person be committed to a mental health facility for a period of no more than 3 months.

(2) The petition shall contain:

(a) the name and address of the person requesting the petition and his interest in the case;

(b) the name of the respondent, and, if known, the address, age, sex, marital status, and occupation of the respondent;

(c) the purported facts supporting the allegation of mental illness;

(d) the name and address of every person known or believed to be legally responsible for the care, support, and maintenance of the person for whom evaluation is sought;

(e) the name and address of the person's next of kin, to the extent known to the county attorney and the person requesting the petition;

(f) the name and address of any person whom the county attorney believes might be willing and able to be appointed as responsible person;

(g) the name, address, and telephone number of the attorney, if any, who has most recently represented the person for whom evaluation is sought. If there is no attorney, there shall be a statement as to whether, to the best knowledge of the person requesting the petition, the person for whom evaluation is sought is indigent and therefore unable to afford the services of an attorney; and

(h) a statement of the rights of the respondent which shall be in conspicuous print and identified by a suitable heading.

(3) (a) The petition shall be filed with the clerk of court who shall immediately notify the judge.

(b) If a judge is available, he shall consider the petition and if he finds no probable cause it shall be dismissed. If the judge finds probable cause, counsel shall be immediately appointed for the respondent and the respondent shall be brought forthwith before the court with his counsel. The respondent shall be advised of his constitutional rights, his rights under this chapter, and the substantive effect of the petition. The respondent may, at this appearance, object to the finding of probable cause for filing the petition. The judge shall appoint a professional person and a responsible person and set a date and time for the hearing on the petition, which may not exceed 5 days, including weekends and holidays unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent. The desires of the respondent shall be taken into consideration in the appointment of the responsible person and in the confirmation of the appointment of the attorney.

(c) If a judge is not available in the county, the clerk shall notify a resident judge by telephone and read the petition to him. If the judge finds no probable cause, the petition shall be dismissed. If the judge finds probable cause, he shall cause the clerk to issue an order appointing counsel and a professional person and setting a date and time for the hearing on the petition, which may not exceed 5 days, including weekends and holidays unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent. The order shall also direct that the respondent be brought forthwith before a justice of the peace with his counsel to be advised of his constitutional rights, his rights under this chapter, and the contents of the clerk's order as well as to furnish him with a copy. The justice of the peace shall ascertain the desires of the respondent with respect to the appointment of his counsel, and this shall be immediately communicated to the resident judge. The resident judge may appoint other counsel, may confer with respondent's counsel and the county attorney in order to appoint a responsible person, and may do all things necessary through the clerk of court by telephone as if the resident judge were personally present.

(4) Following the initial hearing, whether before a judge or justice of the peace, the respondent shall be examined by the professional person without unreasonable delay. The examination may not exceed a period of 4 hours. The professional person shall immediately notify the county attorney of his findings in person or by phone and shall make a written report of his examination to the court, with copies to the respondent's attorney and the county attorney. The following action shall be taken based on the professional person's findings:

(a) If he recommends dismissal, he shall additionally notify counsel and the respondent shall be released and the petition dismissed. However, the county attorney may, upon good cause shown, request the court to order an additional, but no more than one, examination by a different professional person for a period of no more than 4 hours.

(b) If he finds that commitment proceedings should continue, the hearing shall be held as scheduled. The court may not order further evalua-

tion pending the hearing unless sound medical reasons require additional time for a complete evaluation; such reasons shall be set forth in the order along with the amount of additional time needed.

(5) The court may not order detention of respondent pending the hearing unless requested by the county attorney and upon the existence of probable cause for detention. Counsel shall be orally notified immediately. Counsel for the respondent may then request a detention hearing, which shall be held forthwith. In the event of detention, the respondent shall be detained in the least restrictive setting necessary to assure his presence and assure his safety and the safety of others as provided in 38-1304(5). He shall have the right to be examined additionally by a professional person of his choice. Unless objection is made by counsel for the respondent, he shall continue to be evaluated and treated by the professional person pending the hearing.

(6) Notice of the petition shall be hand delivered to the respondent and to his counsel on or before the initial appearance of the respondent before the judge or justice of the peace. Notice of the petition and the order setting the date and time of the hearing and the names of the respondent's counsel, professional person, and responsible person shall be hand delivered or mailed to the person or persons legally responsible for care, support, and maintenance of the respondent, the next of kin identified in the petition, and any other person identified by the county attorney as a possible responsible person other than the one named as the responsible person. The notice may provide, other than as to the respondent and his counsel, that no further notice will be given unless written request is filed with the clerk of court. At any time prior to the date set for hearing, the respondent, through his counsel, may request a jury trial, whereupon the time set for hearing shall be vacated and the matter set on the court's jury calendar at the earliest date possible, the matter taking precedence over all other matters. If there is not a jury in attendance, a jury shall be selected in the manner provided in 93-1512 and a date set for trial by jury not later than 7 days, exclusive of Saturdays, Sundays, and holidays.

(7) The respondent shall be present unless his presence has been waived as provided in 38-1304(2), and he shall be represented by counsel at all stages of the trial. The trial shall be limited to the determination of whether or not the respondent is seriously mentally ill within the meaning set forth in this chapter. The standard of proof in any hearing held pursuant to this section is proof beyond a reasonable doubt with respect to any physical facts or evidence and clear and convincing evidence as to all other matters, except that mental disorders shall be evidenced to a reasonable medical certainty; imminent threat of self-inflicted injury or injury to others shall be evidenced by overt acts, sufficiently recent in time as to be material and relevant as to the respondent's present condition. The professional person appointed by the court shall be present for the trial and subject to cross-examination. The trial shall be governed by the Montana rules of civil procedure except that, if trial by a jury, at least two thirds of the jurors must concur on a finding that the patient is seriously mentally ill. The court may order the trial closed to the public

for the protection of the respondent. If, upon trial, it is determined that the patient is not seriously mentally ill within the meaning of this chapter, he shall be discharged and the petition dismissed.

(8) The court, upon the showing of good cause and when it is in the best interests of the respondent, may order a change of venue.

History: En. 38-1305 by Sec. 5, Ch. 446, L. 1975; amd. Sec. 5, Ch. 546, L. 1977.

Amendments

The 1977 amendment substituted "upon the written request" in subsection (1) for "on his own initiative or upon the request"; substituted "the person be committed to a mental health facility for a period of no more than 3 months" at the end of subsection (1) for "an evaluation of the person's condition be made"; and rewrote subsections (3) through (8).

38-1306. Posttrial disposition—petition for extension. (1) (a) If it is determined that the respondent is seriously mentally ill within the meaning of this chapter the court shall hold a posttrial disposition hearing. The disposition hearing shall be held within 5 days (including Saturdays, Sundays, and holidays unless the fifth day falls on a Saturday, Sunday, or holiday), during which time the court may order further evaluation and treatment of the respondent. At the conclusion of the disposition hearing, the court shall:

(i) commit the respondent to a facility for a period of not more than 3 months;

(ii) order the respondent to be placed in the care and custody of his relative or guardian or some other appropriate place other than an institution;

(iii) order outpatient therapy; or

(iv) make some other appropriate order for treatment.

(b) No treatment ordered pursuant to this subsection may affect the respondent's custody for a period of more than 3 months.

(c) In determining which of the above alternatives to order, the court shall choose the least restrictive alternatives necessary to protect the respondent and the public and to permit effective treatment. The court shall consider and shall describe in its order what alternatives for treatment of the respondent are available, what alternatives were investigated, and why the investigated alternatives were not deemed suitable. The court shall enter into the record a detailed statement of the facts upon which it found the respondent to be seriously mentally ill.

(2) At any time within the 3-month period the patient may be discharged on the written order of the professional person in charge of him. In the event the patient is not discharged within the 3-month period and if the term is not extended as provided herein, he shall be discharged by the facility at the end of 3 months without further order of the court. Notice of the discharge shall be filed with the court and the county attorney at least 5 days prior to the discharge.

(3) Not less than 2 calendar weeks prior to the end of the 3-month period of detention, the professional person in charge of the patient at the place of detention may petition the court for extension of the detention period. The petition shall be accompanied by a written report and evalua-

tion of the patient's mental and physical condition. The report shall describe any tests and evaluation devices which have been employed in evaluating the patient, the course of treatment which has been undertaken for the patient, and the future course of treatment anticipated by the professional person. Upon the filing of the petition, the court shall give written notice of the filing of the petition to the patient, his next of kin, if reasonably available, the responsible person appointed by the court, and to the patient's counsel. If any person so notified requests a hearing prior to the termination of the previous detention authority, the court shall immediately set a time and place for a hearing on a date not more than 10 days from the receipt of the request and notify the same people including the professional person in charge of the patient. If a hearing is not requested, the court shall enter an order of commitment for a period not to exceed 6 months. Procedure on the petition for extension, when a hearing has been requested, shall be the same in all respects as the procedure on the petition for the original 3-month commitment except the patient is not entitled to trial by jury. The hearing shall be held in the district court having jurisdiction over the facility in which the patient is detained unless otherwise ordered by the court. If upon the hearing the court finds the patient not seriously mentally ill within the meaning of this chapter, he shall be discharged and the petition dismissed. If the court finds that the patient continues to suffer from serious mental illness, the court shall order commitment, custody in relatives, outpatient therapy, or other order as set forth in subsection (1) of this section except that no order may affect his custody for more than 6 months. In its order, the court shall describe what alternatives for treatment of the patient are available, what alternatives were investigated, and why the investigated alternatives were not deemed suitable. The court shall not order continuation of an alternative which does not include a comprehensive, individualized plan of treatment for the patient. A court order for the continuation of an alternative shall include a specific finding that a comprehensive, individualized plan of treatment exists.

(4) Further extensions may be obtained under the same procedure described in subsection (3) of this section except that the patient's custody may not be affected for more than 1 year without a renewal of the commitment under the procedures set forth in subsection (3) of this section, including a statement of the findings required by subsection (3).

(5) At any time during the patient's commitment the court may on its own initiative or upon application of the professional person in charge of the patient, the patient, his next of kin, his attorney, or the responsible person appointed by the court, order the patient to be placed in the care and custody of relatives or guardians or to be provided outpatient therapy or other appropriate placement or treatment.

History: En. 38-1306 by Sec. 6, Ch. 466, L. 1975; amd. Sec. 6, Ch. 546, L. 1977.

Amendments

The 1977 amendment deleted former subsections (1) to (4) concerning peti-

tions for commitments not exceeding three months and proceedings upon such petitions; substituted "respondent" throughout the section for "patient"; added "hold a posttrial disposition hearing" at the end of the first sentence of subdivision (1)(a); inserted the second

sentence and that portion of the third sentence before subdivision (1)(a)(i) in subdivision (1)(a); inserted "and the county attorney" in the last sentence of subsection (2); substituted "at least 5 days prior to the discharge" in the last sentence of subsection (2) for "within five (5) days of the discharge"; inserted "at the place

of detention" in the first sentence of subsection (3); inserted the sixth sentence in subsection (3); inserted "when a hearing has been requested" in the seventh sentence of subsection (3); and made minor changes in style, phraseology and punctuation.

DECISIONS UNDER FORMER LAW

Disagreement by Physicians

Where medical jurors disagreed as to necessity of commitment of petitioner in mental institution, order of commitment issued by district court was void and of no effect. Application of Bushman, 153 M 422, 458 P 2d 81.

Fairness of Inquisition

Petitioner who was committed to state hospital was not deprived of his constitu-

tional rights where it appeared that district judge and court attendants went to hospital to advise him of hearing date and his privilege to have counsel, his mother was present at the hearing, which was held in the hospital, and everything was done by the court to see that petitioner's rights were protected and no advantage was taken of him. Petition of Kolocotronis, 145 M 564, 402 P 2d 977.

38-1307. Emergency situation — petition — detention. (1) When an emergency situation exists, a peace officer may take any person who appears to be seriously mentally ill and, as a result of serious mental illness, to be a danger to others or to himself into custody only for sufficient time to contact a professional person for emergency evaluation. If possible, a professional person should be called prior to taking the person into custody.

(2) If the professional person agrees that the person detained appears to be seriously mentally ill and that an emergency situation exists, then the person may be detained and treated until the next regular business day. At that time, the professional person shall release the detained person or file his findings with the county attorney who, if he determines probable cause to exist, shall file the petition provided for in 38-1305 in the county of the respondent's residence. In either case, the professional person shall file a report with the court explaining his actions.

(3) The county attorney of any county may make arrangements with any federal, state, regional, or private mental facility or with a mental health facility in any county for the detention of persons held pursuant to this section.

History: En. 38-1307 by Sec. 7, Ch. 466, L. 1975; amd. Sec. 7, Ch. 546, L. 1977.

Amendments

The 1977 amendment inserted "and treated" in the first sentence of subsection (2); substituted "file his findings with the county attorney who, if he determines probable cause to exist, shall file

the petition provided for in 38-1305 in the county of the respondent's residence" in the second sentence of subsection (2) for "cause the county attorney to file the petition provided for in section 35-1305"; deleted former subsections (3) and (4) concerning court ordered detention and examination based on such petition; and redesignated former subsection (5) as subsection (3).

38-1308. Outpatient care—conditional release. (1) When, in the opinion of the professional person in charge of a mental health facility providing involuntary treatment, the committed person can be appropriately served by outpatient care prior to the expiration of the period of commit-

ment, then outpatient care may be required as a condition for early release for a period which, when added to the inpatient treatment period, may not exceed the period of commitment. If the mental health facility designated to provide outpatient care is other than the facility providing involuntary treatment, the outpatient facility so designated must agree in writing to assume such responsibility.

(2) The mental health facility designated to provide outpatient care or the professional person in charge of the patient's case may modify the conditions for continued release when the modification is in the best interest of the patient. This includes the authorization to transfer the patient to another mental health facility designated to provide outpatient care provided the transfer is in the best interest of the patient and the outpatient facility so designated agrees in writing to assume responsibility. Notice of an intended transfer shall be given to the professional person in charge of the mental health facility that provided the involuntary treatment.

(3) If the mental health facility designated to provide outpatient care determines that a conditionally released person is failing to adhere to the terms and conditions of his release, and because of that failure has become a substantial danger to himself or other persons, then, upon notification by the mental health facility designated to provide outpatient care, or on his own motion, the professional person in charge of the patient's case may order that the conditionally released person be apprehended and returned to the facility from which he was conditionally released. The professional person in charge of the patient's case may modify or rescind the order at any time. The professional person shall mail or deliver notice to the person detained, his attorney, if any, his guardian or conservator, if any, his next of kin, if known, and the responsible person appointed by the court. The sheriff of the county where the mental health facility is located and from which the patient is being transferred has the duty of transporting a patient under the provisions of this section.

(4) The proceedings set forth in subsection (3) of this section may be initiated by the professional person in charge of the patient's case on the same basis set forth therein without the professional person requiring or ordering the apprehension and detention of the conditionally released person.

(5) Notice in writing to the court which committed the patient for treatment and the county attorney who initiated the action shall be provided by the professional person in charge of him at least 5 days prior to his release from commitment or outpatient care.

History: En. 38-1308 by Sec. 8, Ch. 466, L. 1975; amd. Sec. 8, Ch. 546, L. 1977.

Amendments

The 1977 amendment added the last two sentences of subsection (2); added the

last sentence of subsection (3); inserted the requirement of notice to the county attorney who initiated the action in subsection (5); added the time requirement for notice in subsection (5); and made minor changes in style, phraseology and punctuation.

38-1309. Right to counsel and appeal—examination of respondent—records. (1) The person alleged to be seriously mentally ill has the right

to be present at any hearing or trial. If he has no attorney, the judge shall appoint one to represent him at either the hearing or the trial, or both, who shall be compensated from the public funds of the county where the respondent resides. The county of residence shall also pay all precommitment expenses including transportation to a mental health facility incurred in connection with the detention, examination, and precommitment custody of the respondent. The fact that a person is examined, hospitalized, or receives medical, psychological, or other mental health treatment pursuant to this chapter does not relieve a third party from a contractual obligation to pay for the cost of the examination, hospitalization, or treatment.

(2) The respondent or the responsible person appointed by the court may secure an attorney of his own choice and at his own expense to represent the respondent. The respondent, his attorney, or the responsible person appointed by the court may secure a professional person of his own choice to examine the respondent and to testify at the hearing before the court or jury as to the results of his examination.

(3) If the person wishing to secure the testimony of a professional person is unable to do so because of financial reasons and if the respondent joins in the request for the examination, the court shall appoint a professional person other than the professional person requesting the commitment to perform the examination. Whenever possible, the court shall allow the respondent a reasonable choice of an available professional person qualified to perform the requested examination who will be compensated from the public funds of the county where the respondent resides.

(4) Every respondent subject to an order for short term treatment or long-term care and treatment shall be advised of his right to appeal the order by the court at the conclusion of any hearing the result of which such an order may be entered.

(5) Records and papers in proceedings under this chapter shall be maintained separately by the clerks of the several courts. Five days prior to the release of a respondent or patient, the facility shall notify the clerk of the court and the clerk shall immediately seal the record in the case and omit the name of the respondent or patient from the index or indices of cases in the court unless the court orders the record opened for good cause shown.

History: En. 38-1309 by Sec. 9, Ch. 466, L. 1975; amd. Sec. 9, Ch. 546, L. 1977.

Amendments

The 1977 amendment deleted a court determination that the respondent is financially unable to employ an attorney as a prerequisite for compensating the

attorney from public funds in subsection (1); added the last sentence in subsection (1); inserted the first sentence in subsection (2); changed the time for notice in the second sentence of subsection (5) from within five days of release to five days prior to release; and made minor changes in phraseology, punctuation and style.

38-1310. Transfer or commitment to facility—procedure. No person who is in the custody of the department of institutions for any purpose other than treatment of severe mental illness may be transferred or committed to a mental health facility for more than 10 days unless the transfer or commitment is affected according to the procedures set out in this chap-

ter. However, proceedings for involuntary commitment may be commenced in the county of the mental health facility where the person is, in the county of the institution from which the person was transferred to the mental health facility, or in the county of the person's residence. Notice of a transfer shall be given immediately to any assigned counsel at the mental health facility and to the parents of minors, guardians, responsible persons, or conservators, as the case may be.

History: En. 38-1310 by Sec. 10, Ch. **Amendments**

466, L. 1975; amd. Sec. 10, Ch. 546, L. The 1977 amendment inserted "for
1977. more than ten days" in the first sen-
tence; added the last two sentences; and
made minor changes in phraseology.

38-1311. Appeal procedure. Appellate review of any order of short-term evaluation and treatment or long-term commitment may be had by appeal to the supreme court of Montana in the manner as other civil cases. The patient shall not be released pending appeal unless ordered by the court. The appeal shall have priority above all other matters before the supreme court.

History: En. 38-1311 by Sec. 11, Ch.
466, L. 1975.

38-1312. Effect of act on persons currently judged mentally ill. Any person who, by reason of a judicial decree entered by a court of this state prior to the enactment of this act adjudicating such person mentally ill shall, one (1) year following the effective date of this act be deemed to have been released and restored to legal capacity and competency unless, before that time, a petition for an extended detention order is filed with the court.

History: En. 38-1312 by Sec. 12, Ch.
466, L. 1975.

38-1313. Civil and legal rights of person committed. (1) Unless specifically stated in an order by the court, a person involuntarily committed to a facility for a period of evaluation or treatment does not forfeit any legal right or suffer any legal disability by reason of the provisions of this act except insofar as it may be necessary to detain the person for treatment, evaluation, or care.

(2) Whenever a person is committed to a mental health facility for a period of 3 months or longer, the court ordering the commitment may make an order stating specifically any legal rights which are denied the respondent and any legal disabilities which are imposed on him. As part of its order, the court may appoint a person to act as conservator of the respondent's property. Any conservatorship created pursuant to this section terminates upon the conclusion of the involuntary commitment if not sooner terminated by the court. A conservatorship or guardianship extending beyond the period of involuntary commitment may not be created except according to the procedures set forth under Montana law for the appointment of conservators and guardians generally.

(3) A person who has been committed to a mental health facility pursuant to this chapter is automatically restored upon the termination of the commitment to all of his civil and legal rights which may have been lost when he was committed. This subsection does not affect, however, a guardianship or conservatorship created independently of the commitment proceedings according to the provisions of Montana law relating to the appointment of conservators and guardians generally. A person who leaves a mental health facility following a period of evaluation and treatment shall be given a written statement setting forth the substance of this subsection.

(4) A person committed to a mental health facility prior to July 1, 1975, enjoys all the rights and privileges of a person committed after that date.

(5) No person who has received evaluation or treatment under any of the provisions of this chapter may be discriminated against because of that status. For purposes of this section, "discrimination" means giving any unfavorable weight to the fact of hospitalization or outpatient care and treatment unrelated to a person's present capacity to meet standards applicable to all persons. The fact that a person has received evaluation and treatment, whether voluntarily or involuntarily, at a mental health facility may not be admitted into evidence in a subsequent proceeding for involuntary commitment or for the appointment of a guardian or conservator unless it is necessary to a determination of the present condition of the respondent or the prognosis for treatment in the present case and the judge determines that the need for the evidence outweighs the prejudicial effect of its admission.

History: En. 38-1313 by Sec. 13, Ch. 466, L. 1975; amd. Sec. 11, Ch. 546, L. 1977.

Amendments

The 1977 amendment substituted "July

1, 1975" in subsection (4) for "the effective date of this act"; added "unless it is necessary to a determination * * * of its admission" at the end of subsection (5); and made minor changes in phraseology, punctuation and style.

38-1314. Transfer of person committed. (1) If a person is committed under the provisions of this act and is eligible for hospital care or treatment by an agency of the United States, and if a certificate of notification from such agency showing that facilities are available and that the person is eligible for care or treatment therein is received, the court may order the person to be placed in the custody of the agency for hospitalization. The chief officer of any hospital or institution operated by such an agency and in which a person is so hospitalized shall be vested with the same powers as the superintendent of the Montana state hospital with respect to detention, custody, transfer, conditional release, or discharge of the person. Jurisdiction shall be retained in the appropriate courts of this state to inquire into the mental condition of persons so hospitalized, and to determine the necessity for continuance of their hospitalization.

(2) Consistent with other provisions of this act, a person committed under this act for a period of three (3) months or longer may be committed by the court to the custody of friends or next of kin residing outside the state or to a mental health facility located outside the state, if the out-of-

state facility agrees to receive the patient, provided, however, that no such commitment shall be for a longer period of time than is permitted within the state. If the patient is indigent, the expense of supporting him in an out-of-state facility and the expense of transportation shall be borne by the state of Montana.

(3) The transfer of persons committed under the provisions of this act out of Montana or under the laws of another jurisdiction into Montana shall be governed by the provisions of the interstate compact on mental health.

History: En. 38-1314 by Sec. 14, Ch. 466, L. 1975.

38-1315. Fingerprinting prohibited. No person admitted to or in a mental health facility shall be fingerprinted unless required by other provisions of law.

History: En. 38-1315 by Sec. 15, Ch. 466, L. 1975.

38-1316. Photographs permitted — confidential. (1) A person admitted to a mental health facility may be photographed upon admission for identification and the administrative purposes of the facility. Such photographs shall be confidential and shall not be released by the facility except pursuant to court order.

(2) No other nonmedical photographs shall be taken or used without consent of the patient's legal guardian or the responsible person appointed by the court.

History: En. 38-1316 by Sec. 16, Ch. 466, L. 1975.

38-1317. Rights of persons admitted to facility. Patients admitted to a mental health facility, whether voluntarily or involuntarily, shall have the following rights:

(1) Patients have a right to privacy and dignity.

(2) Patients have a right to the least restrictive conditions necessary to achieve the purposes of commitment.

(3) Patients shall have the same rights to visitation and reasonable access to private telephone communications as patients at any public hospitals, except to the extent that the professional person responsible for formulation of a particular patient's treatment plan writes an order imposing special restrictions. The written order must be renewed after each periodic review of the treatment plan if any restrictions are to be continued. Patients shall have an unrestricted right to visitation with attorneys, with spiritual counselors, and with private physicians and other professional persons.

(4) Patients shall have an unrestricted right to send sealed mail. Patients shall have an unrestricted right to receive sealed mail from their attorneys, private physicians, and other professional persons, from the mental disabilities board of visitors, from courts, and government officials. Patients shall have a right to receive sealed mail from others, except

to the extent that a professional person responsible for formulation of a particular patient's treatment plan writes an order imposing special restrictions on receipt of sealed mail. The written order must be renewed after each periodic review of the treatment plan if any restrictions are to be continued.

(5) Patients have an unrestricted right to have access to letter-writing materials, including postage, and have a right to have staff members of the facility assist persons who are unable to write, prepare, and mail correspondence.

(6) Patients have a right to wear their own clothes and to keep and use their own personal possessions including toilet articles, except in so far as such clothes or personal possessions may be determined by a professional person in charge of the patient's treatment plan to be dangerous or otherwise inappropriate to the treatment regimen. The facility has an obligation to supply an adequate allowance of clothing to any patients who do not have suitable clothing of their own. Patients shall have the opportunity to select from various types of neat, clean, and seasonable clothing. Such clothing shall be considered the patient's throughout his stay at the facility. The facility shall make provision for the laundering of patient clothing.

(7) Patients have the right to keep and be allowed to spend a reasonable sum of their own money.

(8) Patients have the right to religious worship. Provisions for such worship shall be made available to all patients on a nondiscriminatory basis. No individual shall be required to engage in any religious activities.

(9) Patients have a right to regular physical exercise several times a week. Moreover, it shall be the duty of the facility to provide facilities and equipment for such exercise. Patients have a right to be outdoors at regular and frequent intervals, in the absence of contrary medical considerations.

(10) Patients have the right to be provided with adequate supervision, suitable opportunities for interaction with members of the opposite sex, except to the extent that a professional person in charge of the patient's treatment plan writes an order stating that such interaction is inappropriate to the treatment regimen.

(11) Patients have a right to receive prompt and adequate medical treatment for any physical ailments. In providing medical care, the mental health facility shall take advantage of whatever community-based facilities are appropriate and available and shall co-ordinate the patient's treatment for mental illness with his medical treatment.

(12) Patients have a right to a diet that will provide at a minimum the recommended daily dietary allowances as developed by the national academy of sciences. Provisions shall be made for special therapeutic diets and for substitutes at the request of the patient, or the responsible person, in accordance with the religious requirements of any patient's faith. Denial of a nutritionally adequate diet shall not be used as punishment.

(13) Patients have a right to a humane psychological and physical environment within the mental health facilities. These facilities shall be designed to afford patients with comfort and safety, promote dignity, and ensure privacy. The facilities shall be designed to make a positive contribution to the efficient attainment of the treatment goals set for the patient. In order to assure the accomplishment of this goal:

(a) Regular housekeeping and maintenance procedures which will ensure that the facility is maintained in a safe, clean, and attractive condition shall be developed and implemented.

(b) There must be special provision made for geriatric and other nonambulatory patients to assure their safety and comfort, including special fittings on toilets and wheelchairs. Appropriate provision shall be made to permit nonambulatory patients to communicate their needs to the facility staff.

(c) Pursuant to an established routine maintenance and repair program, the physical plant of every facility shall be kept in a continuous state of good repair and operation in accordance with the needs of the health, comfort, safety, and well-being of the patients.

(d) Every facility must meet all fire and safety standards established by the state and locality. In addition, any hospital shall meet such provisions of the Life Safety Code of the National Fire Protection Association as are applicable to hospitals. Any hospital shall meet all standards established by the state for general hospitals, in so far as they are relevant to psychiatric facilities.

History: En. 38-1317 by Sec. 17, Ch. 466, L. 1975.

38-1318. Patient labor—rules. The following rules shall govern patient labor:

(1) No patient shall be required to perform labor which involves the operation and maintenance of a facility or for which the facility is under contract with an outside organization. Privileges or release from the facility shall not be conditioned upon the performance of labor covered by this provision. Patients may voluntarily engage in such labor if the labor is compensated in accordance with the minimum wage laws of the Fair Labor Standards Act, 29 U.S.C. sec. 206 as amended.

(2) (a) Patients may be required to perform therapeutic tasks which do not involve the operation and maintenance of the facility, provided the specific task or any change in assignment is:

(i) An integrated part of the patient's treatment plan and approved as a therapeutic activity by a professional person responsible for supervising the patient's treatment; and

(ii) Supervised by a staff member to oversee the therapeutic aspects of the activity.

(b) Patients may voluntarily engage in therapeutic labor for which the facility would otherwise have to pay an employee, provided the specific labor or any change in labor assignment is:

(i) An integrated part of the patient's treatment plan and approved as a therapeutic activity by a professional person responsible for supervising the patient's treatment; and

(ii) Supervised by a staff member to oversee the therapeutic aspects of the activity; and

(iii) Compensated in accordance with the minimum wage laws of the Fair Labor Standards Act, 29 U.S.C. sec. 206 as amended.

(3) If any patient performs therapeutic labor which involves the operation and maintenance of a facility, but due to physical or mental disability is unable to perform the labor as efficiently as a person not so physically or mentally disabled, then the patient may be compensated at a rate which bears the same approximate relation to the statutory minimum wage as his ability to perform that particular job bears to the ability of a person not so afflicted.

(4) Patients may be required to perform tasks of a personal house-keeping nature such as the making of one's own bed.

(5) Deductions or payments for care and other charges shall not deprive a patient of a reasonable amount of the compensation received pursuant to this section for personal and incidental purchases and expenses.

History: En. 38-1318 by Sec. 18, Ch. 466, L. 1975.

38-1319. Medication for patients. Patients have a right to be free from unnecessary or excessive medication. No medication shall be administered unless at the written order of a physician. The attending physician shall be responsible for all medication given or administered to a patient. The use of medication shall not exceed standards of use that are advocated by the United States food and drug administration. Notation of each individual's medication shall be kept in his medical records. At least weekly an attending physician shall review the drug regimen of each patient under his care. Except in the case of outpatients, all prescriptions shall be written with a termination date, which shall not exceed thirty (30) days. Medication shall not be used as punishment, for the convenience of staff, as a substitute for a treatment program, or in quantities that interfere with the patient's treatment program.

History: En. 38-1319 by Sec. 19, Ch. 466, L. 1975.

38-1320. Physical restraint and isolation. Patients have a right to be free from physical restraint and isolation. Except for emergency situations, in which it is likely that patients could harm themselves or others and in which less restrictive means of restraint are not feasible, patients may be physically restrained or placed in isolation only on a professional person's written order which explains the rationale for such action. The written order may be entered only after the professional person has personally seen the patient concerned and evaluated whatever episode or situation is said to call for restraint or isolation. Emergency use of restraints or isolation shall be for no more than one (1) hour, by which time

a professional person shall have been consulted and shall have entered an appropriate order in writing. Such written order shall be effective for no more than twenty-four (24) hours and must be renewed if restraint and isolation are to be continued. Whenever a patient is subject to restraint or isolation, adequate care shall be taken to monitor his physical and psychiatric condition and to provide for his physical needs and comfort.

History: En. 38-1320 by Sec. 20, Ch. 466, L. 1975.

38-1321. Research on patients—restrictions. Patients shall have a right not to be subjected to experimental research without the express and informed consent of the patient, if the patient is able to give such consent, and of his guardian, if any, and the responsible person appointed by the court, after opportunities for consultation with independent specialists and with legal counsel. If there is no responsible person or if the responsible person appointed by the court is no longer available, then a responsible person who is in no way connected with the facility, the department of institutions, or the research project shall be appointed prior to the involvement of the patient in any experimental research. The facility shall send notice of intent to involve the patient in experimental research to the patient, his next of kin, if known, his legal guardian, if any, the attorney who most recently represented him, and the responsible person appointed by the court at least ten (10) days prior to the commencement of such experimental research.

Such proposed research shall first have been reviewed and approved by the mental disabilities board of visitors before such consent shall be sought. Prior to such approval the board shall determine that such research complies with the principles of the statement on the use of human subjects for research of the American association on mental deficiency and with the principles for research involving human subjects required by the United States department of health, education, and welfare for projects supported by that agency.

History: En. 38-1321 by Sec. 21, Ch. 466, L. 1975.

38-1322. Treatment procedures—restrictions. Patients have a right not to be subjected to treatment procedures such as lobotomy, aversive reinforcement conditioning, or other unusual or hazardous treatment procedures without their express and informed consent after consultation with counsel, the legal guardian, if any, the responsible person appointed by the court, and any other interested party of the patient's choice. At least one of those consulted must consent to the treatment along with the patient's counsel. If there is no responsible person or if the responsible person appointed by the court is no longer available, then a responsible person who is in no way connected with the facility or with the department of institutions shall be appointed before any such treatment procedure can be employed. The facility shall send notice of intent to employ extraordinary treatment procedures to the patient, his next of kin, if known, the legal guardian, if any, the attorney who most recently represented him,

and the responsible person appointed by the court at least 10 days prior to the commencement of the extraordinary treatment program.

History: En. 38-1322 by Sec. 22, Ch. 466, L. 1975; amd. Sec. 12, Ch. 546, L. 1977.

Amendments
The 1977 amendment added "along with the patient's counsel" at the end of the second sentence; and made minor changes in phraseology, punctuation and style.

38-1323. Professional person—qualifications. In every mental health facility to which a person is admitted pursuant to this act:

(1) Each professional person and other staff member employed by the facility shall meet all certification requirements promulgated by the department of institutions.

(2) All nonprofessional staff members who have not had prior clinical experience in a mental institution shall have a substantial orientation training.

(3) Staff members on all levels shall have regularly scheduled in-service training.

(4) Each nonprofessional staff member shall be under the direct supervision of a professional person.

History: En. 38-1323 by Sec. 23, Ch. 466, L. 1975.

38-1324. Treatment plan for patient established. (1) Each patient admitted as an inpatient to a mental health facility shall have a comprehensive physical and mental examination and review of behavioral status within 48 hours after admission to the mental health facility.

(2) Each patient shall have an individualized treatment plan. This plan shall be developed by appropriate professional persons including a psychiatrist and shall be implemented no later than 10 days after the patient's admission. Each individualized treatment plan shall contain:

(a) a statement of the nature of the specific problems and specific needs of the patient;

(b) a statement of the least restrictive treatment conditions necessary to achieve the purposes of commitment;

(c) a description of intermediate and long-range treatment goals, with a projected timetable for their attainment;

(d) a statement and rationale for the plan of treatment for achieving these intermediate and long-range goals;

(e) a specification of staff responsibility and a description of proposed staff involvement with the patient in order to attain these treatment goals;

(f) criteria for release to less restrictive treatment conditions, and criteria for discharge; and

(g) a notation of any therapeutic tasks and labor to be performed by the patient.

(3) As part of his treatment plan, each patient shall have an individualized after care plan. This plan shall be developed by a professional person as soon as practicable after the patient's admission to the facility.

(4) In the interests of continuity of care, whenever possible one professional person (who need not have been involved with the development of the treatment plan) shall be responsible for supervising the implementation of the treatment plan, integrating the various aspects of the treatment program, and recording the patient's progress. This professional person shall also be responsible for ensuring that the patient is released, where appropriate, into a less restrictive form of treatment.

(5) The treatment plan shall be continuously reviewed by the professional person responsible for supervising the implementation of the plan and shall be modified if necessary. Moreover, at least every 90 days, each patient shall receive a mental examination from and his treatment plan shall be reviewed by a professional person other than the professional person responsible for supervising the implementation of the plan.

History: En. 38-1324 by Sec. 24, Ch. 466, L. 1975; amd. Sec. 13, Ch. 546, L. 1977.

Amendments

The 1977 amendment deleted "for a period of more than seventy-two (72) hours" after "mental health facility" in subsection (1); deleted "if reasonably available" after "psychiatrist" in the second sentence

of subsection (2); substituted "shall be implemented no later than 10 days after the patient's admission" in the second sentence of subsection (2) for "implemented as soon as possible, in any event, no later than five (5) days after the patient's admission"; and made minor changes in phraseology, punctuation and style.

38-1325. Examination following commitment. No later than 30 days after a patient is committed to a mental health facility, the professional person in charge of the facility or his appointed, professionally qualified agent shall reexamine the committed patient and shall determine whether he continues to require commitment to the facility and whether a treatment plan complying with this chapter has been implemented. If the patient no longer requires commitment to the facility in accordance with the standards for commitment, he must be released immediately unless he agrees to continue with treatment on a voluntary basis. If for sound professional reasons a treatment plan has not been implemented, this fact shall be reported immediately to the professional person in charge of the facility, the director of the department of institutions, the mental disabilities board of visitors, and the patient's counsel.

History: En. 38-1325 by Sec. 25, Ch. 466, L. 1975; amd. Sec. 14, Ch. 546, L. 1977.

Amendments

The 1977 amendment increased the period in the first sentence from fifteen

days after commitment to thirty days; deleted "or if a treatment plan has not been implemented" before "he must be released" in the second sentence; added the last sentence; and made minor changes in phraseology, punctuation and style.

38-1326. Care and treatment following release. The department of institutions and its agents have an affirmative duty to provide adequate transitional treatment and care for all patients released after a period of involuntary confinement. Transitional care and treatment possibilities include, but are not limited to, psychiatric day care, treatment in the home by a visiting therapist, nursing home or extended care, a half-way

house, outpatient treatment, and treatment in the psychiatric ward of a general hospital.

History: En. 38-1326 by Sec. 26, Ch. 466, L. 1975.

38-1327. Treatment of children and young adults. In addition to complying with all the other standards herein, a mental health facility shall make special provisions for the treatment of patients who are children and young adults. These provisions shall include, but are not limited to:

(a) Opportunities for publicly supported education suitable to the educational needs of the patient. This program of education must, in the opinion of the attending professional person be compatible with the patient's mental condition and his treatment program, and otherwise be in the patient's best interest.

(b) A treatment plan which considers the chronological, maturational, and developmental level of the patient.

(c) Sufficient professional persons, teachers, and staff members with specialized skills in the care and treatment of children and young adults.

(d) Recreation and play opportunities in the open air where possible and appropriate residential facilities, separate, wherever possible, from older patients.

(e) Arrangements for contact between the facility and the family of the patient.

History: En. 38-1327 by Sec. 27, Ch. 466, L. 1975.

38-1328. Records to be maintained. Complete patient records shall be kept by the mental health facility and shall be available to any person authorized in writing by the patient and the board. The records shall also be made available to any attorney charged with representing the patient or any professional person charged with evaluating or treating the patient. These records shall include:

(1) identification data, including the patient's legal status;

(2) a patient history, including, but not limited to:

(a) family data, educational background, and employment record;

(b) prior medical history, both physical and mental, including prior hospitalization;

(3) the chief complaints of the patient and the chief complaints of others regarding the patient;

(4) an evaluation which notes the onset of illness, the circumstances leading to admission, attitudes, behavior, estimate of intellectual functioning, memory functioning, orientation, and an inventory of the patient's assets in descriptive rather than interpretative fashion;

(5) a summary of each physical examination which describes the results of the examination;

(6) a copy of the individual treatment plan and any modifications thereto;

(7) a detailed summary of the findings made by the reviewing professional person after each periodic review of the treatment plan which analyzes the successes and failures of the treatment program and directs whatever modifications are necessary;

(8) a copy of the individualized after care plan and any modifications thereto, and a summary of the steps that have been taken to implement that plan;

(9) a medication history and status, which includes the signed orders of the prescribing physician. The staff person administering the medication shall indicate by signature that orders have been carried out.

(10) a detailed summary of each significant contact by a professional person with the patient;

(11) a detailed summary on at least a weekly basis by a professional person involved in the patient's treatment of the patient's progress along the treatment plan;

(12) a weekly summary of the extent and nature of the patient's work activities and the effect of such activity upon the patient's progress along the treatment plan;

(13) a signed order by a professional person for any restrictions on visitations and communications;

(14) a signed order by a professional person for any physical restraints and isolation;

(15) a detailed summary of any extraordinary incident in the facility involving the patient to be entered by a staff member noting that he has personal knowledge of the incident or specifying his other source of information and initialed within 24 hours by a professional person; and

(16) a summary by the professional person in charge of the facility or his appointed agent of his findings after the 30-day review provided for in 38-1325.

History: En. 38-1328 by Sec. 28, Ch. 466, L. 1975; amd. Sec. 15, Ch. 546, L. 1977.

Amendments

The 1977 amendment substituted "any person" in the first sentence for "any

professional person or attorney"; inserted the second sentence; substituted "thirty-day review" in subdivision (16) for "fifteen (15) day review"; and made minor changes in phraseology, punctuation and style.

38-1329. Records to be confidential—exceptions. All information obtained and records prepared in the course of providing any services under this act to individuals under any provision of this act shall be confidential and privileged matter. Such information and records may be disclosed only:

(1) in communications between qualified professional persons in the provision of services or appropriate referrals;

(2) when the recipient of services designates persons to whom information or records may be released, provided that if a recipient of services is a ward, and his guardian or conservator designates, in writing, persons to whom records or information may be disclosed, such designa-

tion shall be valid in lieu of the designation by the recipient; except that nothing in this section shall be construed to compel a physician, psychologist, social worker, nurse, attorney, or other professional person to reveal information which has been given to him in confidence by members of a patient's family;

(3) to the extent necessary to make claims on behalf of a recipient of aid, insurance, or medical assistance to which he may be entitled;

(4) for research, if the department of institutions has promulgated rules for the conduct of research. Such rules shall include, but not be limited to, the requirement that all researchers must sign an oath of confidentiality;

(5) to the courts, as necessary to the administration of justice;

(6) to persons authorized by an order of court after notice and opportunity for hearing to the person to whom the record or information pertains and the custodian of the record or information pursuant to the rules of civil procedure;

(7) to members of the mental disabilities board of visitors or their agents when necessary to perform their functions as set out in section 38-1330.

History: En. 38-1329 by Sec. 29, Ch. 466, L. 1975.

38-1330. Mental disabilities board of visitors—creation and responsibilities. (1) The governor shall appoint a mental disabilities board of visitors. The board shall consist of five persons representing but not limited to consumers, doctors of medicine, and the behavioral sciences, at least three of whom may not be professional persons and at least one of whom shall be a representative of an organization concerned with the care and welfare of the mentally ill. No one may be a member of the board who is a full-time agent or employee of the department of institutions or a mental health facility affected by this chapter, except this prohibition does not affect any employee of a state college or university. If a board of similar title and structure is created in any act concerning the treatment of the mentally retarded or developmentally disabled, then only one board shall be created to perform the functions of both and the board so created shall include at least one representative of an organization concerned with the care and welfare of the mentally ill and one representative of an organization concerned with the care and welfare of the mentally retarded or developmentally disabled.

(2) The mental disabilities board of visitors shall be an independent board of inquiry and review to assure that the treatment of all persons either voluntarily or involuntarily admitted to a mental facility is humane and decent and meets the requirements set forth in this chapter.

(3) The board shall review all plans for experimental research involving persons admitted to a mental health facility to assure that the research project is humane and not unduly hazardous and that it complies with the principles of the statement on the use of human subjects for research of the American association on mental deficiency and with the

principles for research involving human subjects required by the United States department of health, education, and welfare. No experimental research project involving persons admitted to a mental health facility affected by this chapter may be commenced unless it is approved by the mental disabilities board of visitors.

(4) The board shall, at least annually, inspect every mental health facility which is providing treatment and evaluation to any person pursuant to this chapter. The board shall inspect the physical plant, including residential, recreational, dining, and sanitary facilities. It shall visit all wards and treatment areas. The board shall inquire concerning all treatment programs being implemented by the facility.

(5) The board shall annually insure that a treatment plan exists and is being implemented for each patient admitted or committed to a mental health facility under this chapter. The board shall inquire concerning all use of restraints, isolation, or other extraordinary measures.

(6) The board may assist any patient at a mental health facility in resolving any grievance he may have concerning his commitment or his course of treatment in the facility.

(7) The board shall employ and be responsible for full-time legal counsel at the Warm Springs state hospital, whose responsibility shall be to act on behalf of all patients at the institution. The board shall insure that there is sufficient legal staff and facilities to insure availability to all patients and shall require that the appointed counsel periodically interview every patient and examine his files and records. The board may employ additional legal counsel for representation of patients in a similar manner at any other mental health facility having inpatient capability.

(8) If the board believes that any facility is failing to comply with the provisions of this chapter in regard to its physical facilities or its treatment of any patient, it shall report its findings at once to the professional person in charge of the facility and the director of the department of institutions and, if appropriate after waiting a reasonable time for a response from such professional person, the board may notify the next of kin or guardian of any patient involved, the responsible person appointed by the court for any patient involved, and the district court which has jurisdiction over the facility.

(9) The mental disabilities board of visitors shall report annually to the governor and shall report to each session of the legislature concerning the status of the mental health facilities and treatment programs which it has inspected.

(10) The mental disabilities board of visitors shall be attached to the governor for administrative purposes. It may employ staff for the purpose of carrying out its duties as set out in this chapter.

History: En. 38-1330 by Sec. 30, Ch. 466, L. 1975; amd. Sec. 16, Ch. 546, L. 1977.

Amendments

The 1977 amendment inserted "representing but not limited to consumers, doctors of medicine, and the behavioral sci-

ences" in the second sentence of subsection (1); inserted "full-time" before "agent" in the third sentence of subsection (1); added the exception at the end of the third sentence of subsection (1); inserted subsection (7); redesignated former subsections (7) through (9) as (8) through (10); inserted the provision for

waiting for a response prior to notifying the next of kin, guardian, responsible person, and court in subsection (8) and made such notice discretionary rather than mandatory; and made minor changes in phraseology and style.

38-1331. Statement of rights to be furnished and posted. Each patient shall promptly upon his admission receive, in language he understands, a written statement of all of his rights under this chapter, including the right to treatment, the right to the development of a treatment plan, and the right to and the availability of legal counsel, and the rules for patient labor. In addition a copy of the foregoing statement shall be posted in each ward.

History: En. 38-1331 by Sec. 31, Ch. 466, L. 1975; amd. Sec. 17, Ch. 546, L. 1977.

Amendments

The 1977 amendment deleted a requirement that the patient's next of kin,

guardian, conservator, or responsible person appointed by the court receive a statement; added the enumeration of specific rights at the end of the first sentence; and made minor changes in phraseology.

TITLE 39—INSTRUMENTS, ACKNOWLEDGMENT AND PROOF

Chapter 1. Acknowledgment and proof of instruments, 39-107 to 39-109, 39-113, 39-135 to 39-139.

CHAPTER 1—ACKNOWLEDGMENT AND PROOF OF INSTRUMENTS

- Section 39-107. Officer taking acknowledgment must know person—corporations.
39-108. Acknowledgment by married persons.
39-109. Conveyance by married person—acknowledgment.
39-113. Form of certificate of acknowledgment by married person.
39-135. Validation of unacknowledged deeds executed before 1965.
39-136. Validation of unacknowledged deeds executed before 1967.
39-137. Validation of unacknowledged deeds executed before 1969.
39-138. Validation of unacknowledged deeds executed before 1971.
39-139. Validation of unacknowledged deeds executed before 1973.

39-107. (6910) Officer taking acknowledgment must know person — corporations. The acknowledgment of an instrument must not be taken unless the officer taking it knows or has satisfactory evidence that the person making such acknowledgment is the individual who is described in and who executed the instrument; or, if executed by a corporation, that the person making such acknowledgment is the president, or vice-president, or secretary, or assistant secretary of such corporation, or other person duly authorized by resolution of such corporation, who executed it on its behalf.

History: En. Sec. 1605, Civ. C. 1895; re-en. Sec. 4659, Rev. C. 1907; amd. Sec. 1, Ch. 2, L. 1913; re-en. Sec. 6910, R. C. M. 1921; amd. Sec. 1, Ch. 171, L. 1937; amd. Sec. 1, Ch. 12, L. 1974. Cal. Civ. C. Sec. 1185.

Amendments

The 1974 amendment deleted "on the

oath or affirmation of a credible witness" after "satisfactory evidence" near the beginning of the section.

Repealing Clause

Section 2 of Ch. 12, Laws 1974 read "Sections 39-118 and 39-119, R. C. M. 1947, are repealed."

39-108. (6911) Acknowledgment by married persons. The acknowledgment of a married person to an instrument purporting to be executed by such person must be taken the same as that of any other person.

History: En. Sec. 1606, Civ. C. 1895; re-en. Sec. 4660, Rev. C. 1907; re-en. Sec. 6911, R. C. M. 1921; amd. Sec. 16, Ch. 535, L. 1975. Cal. Civ. C. Sec. 1186.

Amendments

The 1975 amendment substituted references to a married person for references to a married woman.

39-109. (6912) Conveyance by married person—acknowledgment. A conveyance by a married person has the same effect as if such person were unmarried, and may be acknowledged in the same manner.

History: En. Sec. 1607, Civ. C. 1895; re-en. Sec. 4661, Rev. C. 1907; re-en. Sec. 6912, R. C. M. 1921; amd. Sec. 17, Ch. 535, L. 1975. Cal. Civ. C. Sec. 1187. Based on Field Civ. C. Sec. 522.

Amendments

The 1975 amendment substituted references to married persons for references to married women.

39-113. (6916) Form of certificate of acknowledgment by married person. The certificate of acknowledgment by a married person must be substantially in the form prescribed in section 39-111.

<p>History: En. Sec. 1611, Civ. C. 1895; re-en. Sec. 4665, Rev. C. 1907; re-en. Sec. 6916, R. C. M. 1921; amd. Sec. 18, Ch. 535, L. 1975. Cal. Civ. C. Sec. 1191.</p>	<p>Amendments The 1975 amendment substituted "married person" for "married woman."</p>
--	---

39-118, 39-119. Repealed.

<p>Repeal These sections (Secs. 1616, 1617, Civ. C. 1895), relating to proof by a subscribing</p>	<p>witness, were repealed by Sec. 2, Ch. 12, Laws 1974.</p>
--	---

39-135. Validation of unacknowledged deeds executed before 1965. All deeds to real property heretofore executed in this state, or any state or territory of the United States, provided no action is now pending to set aside any such deed, which shall have been signed by the grantors in due form, shall be sufficient in law to convey the legal title to the premises therein described from the grantors to the grantees, without any other execution or acknowledgment or witnesses thereto whatever; and such deeds so executed shall be received in evidence in all courts in this state, and be conclusive evidence of the title to the lands therein described against the grantors, their heirs and assigns.

<p>History: En. Sec. 1, Ch. 123, L. 1965.</p>	<p>clusive evidence of title against the grantors, containing a repealing clause.</p>
--	---

Title of Act

An act validating deeds and conveyances heretofore made which are defective in execution or acknowledgment, providing that such instruments shall be con-

Repealing Clause

Section 2 of Ch. 123, Laws 1965 repealed all acts and parts of acts in conflict therewith.

39-136. Validation of unacknowledged deeds executed before 1967. All deeds to real property executed prior to January 1, 1967 in this state, or any state or territory of the United States, provided no action is now pending to set aside any such deed, which shall have been signed by the grantors in due form, shall be sufficient in law to convey the legal title to the premises therein described from the grantors to the grantees, without any other execution or acknowledgment or witnesses thereto whatever; and such deeds so executed shall be received in evidence in all courts in this state, and be conclusive evidence of the title to the lands therein described against the grantors, their heirs and assigns.

History: En. Sec. 1, Ch. 183, L. 1967.

Title of Act

An act validating deeds and conveyances made prior to January 1, 1967 which

are defective in execution or acknowledgment, providing that such instruments shall be conclusive evidence of title against the grantors.

39-137. Validation of unacknowledged deeds executed before 1969. All deeds to real property executed prior to January 1, 1969, in this state, or any state or territory of the United States, provided no action is now pending to set aside any such deed, which shall have been signed by the grantors in due form, shall be sufficient in law to convey the

legal title to the premises therein described from the grantors to the grantees, without any other execution or acknowledgment or witnesses thereto whatever; and such deeds so executed shall be received in evidence in all courts in this state, and be conclusive evidence of the title to the lands therein described against the grantors, their heirs and assigns.

History: En. Sec. 1, Ch. 77, L. 1969.

Title of Act

An act validating deeds and conveyances made prior to January 1, 1969,

which are defective in execution or acknowledgment, providing that such instruments shall be conclusive evidence of title against the grantors.

39-138. Validation of unacknowledged deeds executed before 1971.

All deeds to real property executed prior to January 1, 1971, in this state, or any state or territory of the United States, provided no action is now pending to set aside any such deed, which shall have been signed by the grantors in due form, shall be sufficient in law to convey the legal title to the premises therein described from the grantors to the grantees, without any other execution or acknowledgment or witnesses thereto whatever; and such deeds so executed shall be received in evidence in all courts in this state, and be conclusive evidence of the title to the lands therein described against the grantors, their heirs and assigns.

History: En. Sec. 1, Ch. 95, L. 1971.

Title of Act

An act validating deeds and conveyances made prior to January 1, 1971,

which are defective in execution or acknowledgment, providing that such instruments shall be conclusive evidence of title against the grantors.

39-139. Validation of unacknowledged deeds executed before 1973.

All deeds to real property executed prior to January 1, 1973, in this state, or any state or territory of the United States, provided no action is now pending to set aside any such deed, which shall have been signed by the grantors in due form, shall be sufficient in law to convey the legal title to the premises therein described from the grantors to the grantees, without any other execution or acknowledgment or witnesses thereto whatever; and such deeds so executed shall be received in evidence in all courts in this state, and be conclusive evidence of the title to the lands therein described against the grantors, their heirs and assigns.

History: En. Sec. 1, Ch. 82, L. 1973.

Title of Act

An act validating deeds and conveyances made prior to January 1, 1973, which

are defective in execution or acknowledgment, providing that such instruments shall be conclusive evidence of title against the grantors.

TITLE 40—INSURANCE AND INSURANCE COMPANIES

Chapter 27. The commissioner of insurance, 40-2709, 40-2716, 40-2717, 40-2726.

28. Authorization of insurers and general requirements, 40-2807, 40-2819 to 40-2822, 40-2827 to 40-2829.
29. Kinds of insurance—limits of risk—reinsurance, 40-2905, 40-2906, 40-2911.
30. Assets and liabilities, 40-3010, 40-3011.
33. Agents, solicitors and adjusters, 40-3308 to 40-3314, 40-3321, 40-3324, 40-3327, 40-3328, 40-3332 to 40-3348.
34. Unauthorized insurers and surplus lines, 40-3427.
35. Trade practices and frauds, 40-3501, 40-3502.1 to 40-3502.3, 40-3506, 40-3512, 40-3514, 40-3514.1, 40-3516.1, 40-3520.
36. Rates and rating organizations, 40-3634 to 40-3669.
37. The insurance contract, 40-3729, 40-3738 to 40-3740.
38. Life insurance and annuities, 40-3802, 40-3831.
39. Group life insurance, 40-3905.1, 40-3906, 40-3909.
40. Disability insurance policies, 40-4002, 40-4002.1, 40-4008, 40-4035 to 40-4038.
41. Group and blanket disability insurance, 40-4101, 40-4102, 40-4108, 40-4109.
42. Credit life and disability insurance, 40-4203, 40-4206, 40-4211.
43. Property insurance contracts, 40-4303.
44. Casualty insurance contracts, 40-4401 to 40-4416.
47. Organization and corporate procedures of stock and mutual insurers, 40-4705, 40-4745, 40-4751 to 40-4763.
48. Farm mutual insurers, 40-4804, 40-4807.
49. Benevolent associations, 40-4902, 40-4913, 40-4917, 40-4918.
51. Rehabilitation and liquidation, 40-5127, 40-5134.
53. Fraternal benefit societies, 40-5305, 40-5321, 40-5324.
54. Extended health insurance for older persons, 40-5401 to 40-5408.
55. Insurance holding companies, 40-5501 to 40-5522.
56. Workmen's compensation insurance premium rates, 40-5601 to 40-5606, 40-5616 to 40-5618.
57. Insurance guaranty association, 40-5701 to 40-5718.
58. Life and health insurance guaranty association act, 40-5801 to 40-5819.
59. Health service corporations, 40-5901 to 40-5923.
60. Medical liability insurance, 40-6001 to 40-6010.

CHAPTER 17—SURETY COMPANIES

40-1727. (6236) Repealed.

Repeal

This section (Sec. 3, Ch. 6, L. 1911; Sec. 1, Ch. 145, L. 1923; Sec. 1, Ch. 45, L. 1935; Sec. 19, Ch. 177, L. 1965), relating to the official bonds of county, city

and township officers, was repealed by Sec. 10, Ch. 68, Laws 1967. For new provisions relating to bonds of county officers and employees, see sec. 6-203 et seq.

CHAPTER 26—SCOPE OF CODE

40-2609. Compliance required.

Punitive Damages

If insurance company stalled payment on claim deliberately, and ultimately failed to pay, breach of insurance con-

tract was also violation of insurance code, and punitive damages could be awarded. *Helton v. Reserve Life Ins. Co.*, 399 F Supp 1322.

40-2611. Exempted organizations, activities.

Compiler's Notes

Section 15-1401, referred to in this sec-

tion in the parent volume, was repealed by Sec. 98, Ch. 198, Laws 1967.

40-2617. General penalty.**Applicability**

Separate penalty section here provided is applicable to violation of section 40-4011 requiring prompt payment of claims.

State ex rel. Larson v. District Court, Eighth Judicial District, 149 M 131, 423 P 2d 598.

CHAPTER 27—THE COMMISSIONER OF INSURANCE

- Section 40-2709. General powers, duties.
 40-2716. Examination reports.
 40-2717. Examination expense.
 40-2726. Fees and licenses.

40-2709. General powers, duties. (1) to (3). * * * [Same as parent volume.]

(4) The commissioner may, after having conducted a hearing, pursuant to section 40-2720, impose a fine not to exceed the sum of five thousand dollars (\$5,000) upon a person found to have violated any provision of this code or regulation duly promulgated by the commissioner, except that the fine imposed upon agents or adjusters shall not exceed five hundred dollars (\$500). Said fine shall be in addition to all other penalties imposed by the laws of this state and shall be collected by the commissioner in the name of the state of Montana. Imposition of any fine hereunder shall be an order from which an appeal may be taken, pursuant to the provisions of section 40-2725.

(5) The commissioner shall have such additional powers and duties as may be provided by other laws of this state.

History: En. Sec. 28, Ch. 286, L. 1959; amd. Sec. 1, Ch. 16, L. 1969.

Amendments

The 1969 amendment inserted subsection (4) and redesignated former subsection (4) as subsection (5).

40-2712. Repealed.**Repeal**

Section 40-2712 (Sec. 31, Ch. 286, L. 1959), relating to the commissioner's an-

nual report, was repealed by Sec. 44, Ch. 93, Laws 1969. For present law, see sections 82-4001 and 82-4002.

40-2716. Examination reports. (1) and (2). * * * [Same as parent volume.]

(3) Any director, officer, agent or employee of any company who destroys any books, records or documents required to be kept by law for the purpose of hindering any examination in violation of the requirements of this section shall be punished by a fine of not more than one thousand dollars (\$1,000), and, after a hearing thereon for that purpose, the commissioner may revoke the certificate of authority of such company.

(4) The commissioner shall furnish a copy of the proposed report to the person examined not less than twenty (20) days prior to filing the same in his office. If such person so requests in writing within such twenty-day period, the commissioner shall grant a hearing with respect to the report, and shall not so file the report until after the hearing and after such modifications, if any, have been made therein as the commissioner deems proper.

(5) The report when so verified and filed shall be presumptive evidence, in any action or proceeding brought by the commissioner against the person examined, or against its officers or agents, of the facts stated therein. The commissioner and his examiners may at any time testify and offer other proper evidence as to information secured during the course of an examination, whether or not a written report of the examination has at that time been either made, served, or filed in the commissioner's office.

(6) The commissioner may withhold from public inspection any examination or investigation report for so long as he deems such withholding to be necessary for the protection of the person examined against unwarranted injury or to be in the public interest.

(7) If he deems such to be in the public interest the commissioner may publish any such examination report or a summary thereof in one or more newspapers in the state.

History: En. Sec. 35, Ch. 286, L. 1959;
amd. Sec. 1, Ch. 28, L. 1967.

Amendments

The 1967 amendment inserted a new subsection (3) and redesignated former subsections (3) through (6) as present subsections (4) through (7).

40-2717. Examination expense. (1). * * * [Same as parent volume.]

(2) The commissioner shall pay to the state treasurer to the credit of the general fund all moneys received pursuant to subsection (1) above.

(3). * * * [Same as parent volume.]

History: En. Sec. 36, Ch. 286, L. 1959;
amd. Sec. 72, Ch. 147, L. 1963.

Amendment

The 1963 amendment rewrote subsection (2). For previous text, see parent volume.

40-2725. Appeals from the commissioner.

Compiler's Notes

Section 40-3633, referred to in subsection (8), was repealed by Sec. 37, Ch.

362, Laws of 1969. For a similar provision in current law, see section 40-3664.

40-2726. Fees and licenses. (1) The commissioner shall collect in advance, and the persons so served shall so pay to the commissioner, the following fees and licenses:

(a) Certificates of authority.

(i) * * * [Same as parent volume.]

(ii) Annual continuation of certificate of authority ----- 300.00

(iii) Reinstatement of certificate of authority ----- 25.00

(b) to (e) * * * [Same as parent volume.]

(f) Nonresident agent's license, property, casualty, title insurance agents, and disability insurance without additional license or fee when written by property, casualty, or surety insurer otherwise represented by the agent:

(i) application for original license including issuance of license,
if issued ----- 100.00

(ii) appointment of agent, each insurer	5.00
(iii) annual renewal or appointment of agent, each insurer	100.00
(g) Solicitor's license:	
(i) Application for original license including issuance of license, if issued	5.00
(ii) Annual continuation of license	5.00
(h) Agent's license, life, disability insurance:	
(i) Application for original license, each insurer	5.00
(ii) Annual continuation or renewal of license, each insurer	5.00
(iii) Temporary license, each insurer	5.00
(i) Nonresident agent's license, life, disability insurance:	
(i) application for original license, including issuance of license if issued, each insurer	100.00
(ii) annual continuation or renewal of license, each insurer	100.00
(j) Examination for license as agent or solicitor, each examina- tion	10.00
(k) Surplus line agent's license:	
(i) Application for original license and for issuance of license, if issued	25.00
(ii) Annual renewal or continuation of license	25.00
(l) Adjuster's license:	
(i) Application for original license and for issuance of license, if issued	10.00
(ii) Annual continuation or renewal of license	10.00
(m) Insurance vending machine license, each machine, each year	10.00
(n) Commissioner's certificate under seal (except when on cer- tificates of authority or licenses)	3.00
(o) Copies of documents on file in the commissioner's office, per page50
(p) Policy forms:	
(i) Filing each policy form	25.00
(ii) Filing each application, rider, endorsement, amendment, in- sert page, schedule or rates and clarification of risks	10.00
(iii) Maximum charge if policy and all forms submitted at one time, or resubmitted for approval within 180 days	50.00

(2) The commissioner shall promptly deposit with the state treasurer to the credit of the general fund of this state all fees and licenses received by him under this section.

(3) The fees provided for in this section shall be in lieu of all fees heretofore payable with respect to insurance or insurers under section 25-101.

History: En. Sec. 45, Ch. 286, L. 1959; Ch. 334, L. 1973; amd. Sec. 1, Ch. 444, L. amd. Sec. 1, Ch. 32, L. 1969; amd. Sec. 1, 1975; amd. Sec. 1, Ch. 322, L. 1977.

Compiler's Notes

Section 25-101 referred to in subsection (3), was repealed by Sec. 673, Ch. 286, Laws of 1959.

Amendments

The 1969 amendment raised the fee for an annual continuation of certificate of authority provided in item (1)(a)(ii) from \$25 to \$300.

The 1973 amendment inserted subdivision (1)(n).

The 1975 amendment inserted "or fed-

eral and private grant clearance fund" in subsection (2).

The 1977 amendment inserted subdivision (1)(f); redesignated former subdivisions (1)(f) and (1)(g) as subdivisions (1)(g) and (1)(h); inserted subdivision (1)(i); redesignated former subdivisions (1)(h) to (1)(n) as subdivisions (1)(j) to (1)(p); increased the fee for commissioner's certificate in subdivision (1)(n) from \$1.00 to \$3.00; and deleted "or federal and private grant clearance fund" after "general fund" in subsection (2).

CHAPTER 28—AUTHORIZATION OF INSURERS AND GENERAL REQUIREMENTS

- Section 40-2807. Capital funds required.
 40-2819. Serving process—time to plead.
 40-2820. Annual statement.
 40-2821. Tax.
 40-2822. Resident agent required—countersignature—records—exceptions.
 40-2827. Definition of profession.
 40-2828. Information required of professional liability insurers.
 40-2829. Submission by insurance commissioner to boards.

40-2801. Certificate of authority required, etc.

Access to Courts

This section prohibits the transaction of insurance business without a certificate of authority from the commissioner but does not deny unauthorized companies

access to the courts; a certificate of authority is not required to maintain and protect policies lawfully written in Montana. *Empire Life Ins. Co. of America v. Sorenson*, 347 F Supp 987.

40-2807. Capital funds required. (1) To qualify for authority to transact any one kind as (defined in chapter 29) of insurance, or combinations of kinds of insurance as shown below, an insurer shall possess and thereafter maintain unimpaired paid-in capital stock (if a stock insurer) or surplus (if a foreign mutual or foreign reciprocal insurer) in amount not less than as applicable under the schedule below and shall possess when first so authorized such additional funds as surplus as required under section 40-2808:

Kind or kinds of insurance	Minimum capital or surplus required
Life -----	\$200,000
Disability -----	200,000
Life and disability -----	300,000
Property -----	400,000
Marine -----	400,000
Casualty	
All lines except workmen's compensation -----	400,000
All lines, including workmen's compensation ----	600,000
Surety -----	500,000
Title -----	200,000
Multiple lines (two or more: property, marine, casualty or surety) -----	800,000

Except, that an insurer holding a valid certificate of authority to transact insurance in this state immediately prior to the effective date of this code may, if otherwise qualified therefor, continue to be so authorized for a period of five (5) years from such effective date by maintaining the same amount of paid-in capital stock (if a stock insurer) or the same amount of surplus (if a mutual or reciprocal insurer) as required by the laws of this state for such authority immediately prior to such effective date, and shall after expiration of such five-year period have or receive authority to transact insurance in this state only if otherwise qualified therefor while having and maintaining paid-in capital stock (if a stock insurer) or surplus (if a mutual or reciprocal insurer) in applicable amount as otherwise required under this section; except, further, that any such insurer shall not, within such five-year period, be granted authority to transact any other or additional kind of insurance unless it then fully complies with the requirements as to capital and surplus, as applied to all kinds of insurance it then proposes to transact, as provided by this code as to insurers applying for original certificates of authority under this code.

(2) to (4) * * * [Same as parent volume.]

History: En. Sec. 52, Ch. 286, L. 1959; amd. Sec. 1, Ch. 319, L. 1977.

Amendments

The 1977 amendment doubled the minimum capital or surplus requirements for each kind of insurance set out in subsection (1).

Saving Clause

Section 2 of Ch. 319, Laws 1977 read

"Insurers transacting business immediately prior to the effective date of this act have 3 years from the effective date of this act to comply with the increased capital and surplus requirements. Such insurers may not be granted authority to transact additional kinds of insurance during this 3-year period unless they comply with the requirements of this act."

40-2818. Commissioner attorney for service of process.

Venue of Action

Statute cannot be construed, for purpose of venue, under statute providing that actions be tried in county in which defendants reside, as giving a foreign insurance company residency in county

of insurance commissioner, serving as agent of insurance company for service of process. *Truck Ins. Exchange v. National Farmers Union Property & Cas. Co.*, 149 M 387, 427 P 2d 50.

40-2819. Serving process—time to plead. (1) Duplicate copies of legal process against an insurer for whom the commissioner is attorney pursuant to section 40-2818, shall be served upon the commissioner, or upon his deputy or other person in charge of his office during his absence. At the time of service the plaintiff shall pay to the commissioner \$10, taxable as costs in the action. Upon receiving such service the commissioner shall promptly forward a copy thereof by certified or registered mail to the person last so designated by the insurer to receive the same.

(2) and (3) * * * [Same as parent volume.]

History: En. Sec. 64, Ch. 286, L. 1959; amd. Sec. 1, Ch. 321, L. 1977.

Amendments

The 1977 amendment increased the cost of serving process on the commissioner from \$3 to \$10.

40-2820. Annual statement. (1) to (3). * * * [Same as parent volume.]

(4) Any director, officer or agent or employee of any company who subscribes to, makes, or concurs in making, or publishing, any annual statement, or any other statement required by law, knowing the same to contain any material statement which is false shall be punished by a fine of not more than one thousand dollars (\$1,000).

(5) At time of filing, the insurer shall pay to the commissioner the fee for filing its statement as prescribed in section 40-2726.

History: En. Sec. 65, Ch. 286, L. 1959;
amd. Sec. 1, Ch. 27, L. 1967.

Amendments

The 1967 amendment added a new subsection (4) and redesignated former subsection (4) as present subsection (5).

40-2821. Tax. (1). * * * [Same as parent volume.]

(2) Coincident with the filing of the tax report referred to in subsection (1) above, each such insurer shall pay to the commissioner a tax upon such net premiums, the tax to be computed at the rate of two and three-quarters per cent (2-3/4%) of such premiums.

Provided, that where any insurer has not less than fifty per cent (50%) of its paid-in capital stock invested in Montana securities, the insurer shall be allowed to deduct whatever tax it may have already paid to the state of Montana and its political subdivisions, during the same calendar year as to which premium tax is being paid, from the amount otherwise due under this section. For the purpose of this provision "paid-in capital stock" as to a mutual or reciprocal insurer shall be deemed to be an amount equal to ten per cent (10%) of the insurer's assets; and "Montana securities" shall be deemed to include only general obligations of the state of Montana or of its political subdivisions, mortgage loans secured by a first lien upon real estate located in Montana, and real estate located in Montana owned by the insurer, all if otherwise lawful investments of the insurer under this code.

(3) (a) On or before March 1 of each year each insurer shall file with the commissioner, on forms as prescribed and furnished or accepted by him, a report of its gross underwriting profit on wet marine and transportation insurance, as defined in section 40-2907, written in this state during the calendar year next preceding, and shall at the same time pay to the commissioner a tax of three-quarters of one per cent (3/4 of 1%) of such gross underwriting profit.

(b) * * * [Same as parent volume.]

(4) to (7) * * * [Same as parent volume.]

(8) The provisions of this section shall apply to taxable years beginning after December 31, 1968.

History: En. Sec. 66, Ch. 286, L. 1959;
amd. Sec. 1, Ch. 160, L. 1961; amd. Sec. 1, Ch. 78, L. 1963; amd. Sec. 1, Ch. 26, L. 1965; amd. Sec. 1, Ch. 71, L. 1967; amd. Sec. 1, Ch. 358, L. 1969; amd. Sec. 1, Ch. 237, L. 1971.

Amendments

The 1963 amendment substituted "1963 and 1964" for "1961 and 1962" in the proviso to the first paragraph of subsection (2).

The 1965 amendment substituted "1965 and 1966" for "1963 and 1964" in the

proviso to the first paragraph of subsection (2).

The 1967 amendment substituted "1967 and 1968" for "1965 and 1966" in the proviso to the first paragraph of subsection (2).

The 1969 amendment, in subsection (2), substituted "1969 and 1970" for "1967 and 1968" and "two and three-quarters per cent (2¾%)" for "two and one-quarter per cent (2¼%)."

The 1971 amendment increased the tax rate set forth in the first paragraph of subsection (2) from 2% to 2¾%; deleted a former proviso to the first paragraph of subsection (2) reading, "provided that for each of the calendar years 1969 and

1970 the tax shall be computed at the rate of two and three-quarters per cent (2¾%) of such premiums"; substituted "December 31, 1968" for "December 31, 1960" in subsection (8); and made a minor change in style.

Effective Date

Section 2 of Ch. 237, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 3, 1971.

Cross-Reference

Payments to cities and towns from proceeds of tax on motor vehicle insurance premiums, secs. 11-1834 to 11-1837.

40-2822. Resident agent required—countersignature—records—exceptions. (1) and (2). * * * [Same as parent volume.]

(3) This section shall not apply to:

(a) Reinsurance.

(b) Life insurance, disability insurance or annuity contracts.

(c) Insurance of the rolling stock, vessels or aircraft of any common carrier in interstate or foreign commerce, or of any vehicle principally garaged and used in another state, or covering any liability or other risks incident to the ownership, maintenance or operation thereof.

(d) Insurance of property in course of transportation interstate or in foreign trade, or any liability or risk incident thereto.

(e) Insurance of wet marine and transportation risks.

(f) With respect to countersignature to policies issued through agents compensated only by salary or issued by insurers not using agents in the general solicitation of business.

(g) Bid bonds, as required under section 6-501, R.C.M. 1947.

(4). * * * [Same as parent volume.]

History: En. Sec. 67, Ch. 286, L. 1959;
amd. Sec. 1, Ch. 72, L. 1963.

Amendment

The 1963 amendment added clause (g) to subsection (3).

40-2827. Definition of profession. For purposes of 40-2827 through 40-2829, "profession" means the occupations engaged in by physicians, osteopaths, registered nurses, licensed practical nurses, dentists, optometrists, podiatrists, chiropractors, hospitals, attorneys, certified public accountants, public accountants, architects, veterinarians, pharmacists, and professional engineers.

History: En. 40-2827 by Sec. 1, Ch. 212, L. 1977.

Title of Act

An act to require insurers transacting

professional liability insurance to include in their annual statement to the insurance commissioner certain statistics and information.

40-2828. Information required of professional liability insurers. Each insurance company engaged in issuing professional liability insurance in the state of Montana shall include the following information, by profession,

from its experience in the state of Montana, in its annual statement to the insurance commissioner:

- (1) the number of insureds as of December 31 of the calendar year next preceding;
- (2) the amount of earned premiums paid by the insureds during the calendar year next preceding;
- (3) the number of claims made against the insurer's insureds and the number of claims outstanding as of December 31 of the calendar year next preceding;
- (4) the number of claims paid by the insurer during the calendar year next preceding and the total monetary amount thereof;
- (5) the number of lawsuits filed against the insurer's insureds and the number of insureds included therein during the calendar year next preceding;
- (6) the number of lawsuits previously filed against the insurer's insureds which were dismissed without settlement or trial and the number of insureds included therein during the calendar year next preceding;
- (7) the number of lawsuits previously filed against the insurer's insureds which were settled without trial, the total monetary amount paid as settlements in such settled cases, and the number of insureds included therein during the calendar year next preceding;
- (8) the number of lawsuits against the insurer's insureds which went to trial during the calendar year next preceding and the number of such cases ending in the following:
 - (a) judgment or verdict for the plaintiff;
 - (b) judgment or verdict for the defendant;
 - (c) other;
- (9) the total monetary amount paid out, in those lawsuits specified in subsection (8);
- (10) the total number of the insurer's insureds included in those lawsuits specified in subsection (8);
- (11) the number of new trials granted during the calendar year next preceding;
- (12) the number of lawsuits pending on appeal as of December 31 of the next preceding calendar year; and
- (13) such other information and statistics as the insurance commissioner considers necessary.

History: En. 40-2828 by Sec. 2, Ch. 212, L. 1977.

40-2829. Submission by insurance commissioner to boards. The insurance commissioner shall, within 60 days of request, submit in writing to the appropriate licensing authority the data and information furnished him pursuant to 40-2827 through 40-2829 relevant to the particular profession or facility.

History: En. 40-2829 by Sec. 3, Ch. 212, L. 1977. "Sections 1 through 3 of this act shall be codified in Chapter 28, Title 40, as sections of the Insurance Code."

Codification

Section 4 of Ch. 212, Laws 1977 read

CHAPTER 29—KINDS OF INSURANCE—LIMITS OF RISK—
REINSURANCE

Section 40-2905. "Casualty insurance" defined.

40-2906. "Surety insurance" defined.

40-2911. Bulk reinsurance, foreign or alien insurers.

40-2905. "Casualty insurance" defined. (1) Casualty insurance includes:

(a) vehicle insurance which is insurance against loss of or damage to any land vehicle or aircraft or any draft or riding animal or to property while contained therein or thereon or being loaded or unloaded therein or therefrom from any hazard or cause and against any loss, liability, or expense resulting from or incidental to ownership, maintenance, or use of any such vehicle, aircraft, or animal, together with insurance against accidental death or accidental injury to individuals, including the named insured, while in, entering, alighting from, adjusting, repairing, cranking, or caused by being struck by a vehicle, aircraft, or draft or riding animal, if such insurance is issued as an incidental part of insurance on the vehicle, aircraft, or draft or riding animal;

(b) liability insurance which is insurance against legal liability for the death, injury, or disability of any human being or for damage to property and provision of medical, hospital, surgical, and disability benefits to injured persons and funeral and death benefits to dependents, beneficiaries, or personal representatives of persons killed, irrespective of legal liability of the insured, when issued as an incidental coverage with or supplemental to liability insurance;

(c) workers' compensation and employer's liability which is insurance of the obligations accepted by, imposed upon, or assumed by employers under law for death, disablement, or injury of employees;

(d) burglary and theft which is insurance against loss or damage by burglary, theft, robbery, forgery, fraud, deceptive practices, vandalism, criminal mischief, confiscation, or wrongful conversion, disposal, or concealment or from any attempt at any of the foregoing, including supplemental coverage for medical, hospital, surgical, and funeral expense incurred by the named insured or any other person as a result of bodily injury during the commission of a burglary, robbery, or theft by another; also insurance against loss of or damage to moneys, coins, bullion, securities, notes, drafts, acceptances, or any other valuable papers and documents, resulting from any cause;

(e) personal property floater which is insurance upon personal effects against loss or damage from any cause under a personal property floater;

(f) glass which is insurance against loss or damage to glass, including its lettering, ornamentation, and fittings;

(g) boiler and machinery which is insurance against any liability and loss or damage to property or interest resulting from accident to or explosions of boilers, pipes, pressure containers, machinery, or apparatus and from making inspection of and issuing certificates of inspection upon boilers, machinery, and apparatus of any kind, whether or not insured;

(h) leakage and fire extinguishing equipment which is insurance against loss or damage to any property or interest caused by the breakage or leakage of sprinklers, hoses, pumps, and other fire extinguishing equipment or apparatus, water pipes, or containers or by water entering through leaks or openings in buildings and insurance against loss or damage to such sprinklers, hoses, pumps, and other fire extinguishing equipment or apparatus;

(i) credit which is insurance against loss or damage resulting from failure of debtors to pay their obligations to the insured;

(j) malpractice which is insurance against legal liability of the insured and against loss, damage, or expense incidental to a claim of such liability, including medical, hospital, surgical, and funeral benefits to injured persons, irrespective of legal liability of the insured, arising out of the death, injury, or disablement of any person or arising out of damage to the economic interest of any person, as the result of negligence in rendering expert, fiduciary, or professional service;

(k) elevator which is insurance against loss of or damage to any property of the insured, resulting from the ownership, maintenance, or use of elevators, except loss or damage by fire and from making inspection of and issuing certificates of inspection upon elevators;

(l) livestock which is insurance against loss or damage to livestock and for services of a veterinary for such animals;

(m) entertainments which is insurance indemnifying the producer of any motion picture, television, radio, theatrical, sport, spectacle, entertainment, or similar production, event, or exhibition against loss from interruption, postponement, or cancellation thereof due to death, accidental injury, or sickness of performers, participants, directors, or other principals;

(n) miscellaneous which is insurance against any other kind of loss, damage, or liability properly a subject of insurance and not within any other kind of insurance as defined in this chapter, if such insurance is not disapproved by the commissioner as being contrary to law or public policy.

(2) Provision of medical, hospital, surgical, and funeral benefits and of coverage against accidental death or injury, as incidental to and part of other insurance as stated under subdivisions (a) (vehicle), (b) (liability), (d) (burglary), and (j) (malpractice) of subsection (1) shall for all purposes be considered to be the same kind of insurance to which it is so incidental and shall not be subject to provisions of this code applicable to life or disability insurances.

History: En. Sec. 76, Ch. 286, L. 1959;
amd. Sec. 49, Ch. 359, L. 1977.

Amendments

The 1977 amendment substituted "worker's compensation" in subdivision (1)(c)

for "Workmen's compensation"; deleted "larceny" after "theft" in subdivision (1) (d); inserted "deceptive practices" in subdivision (1)(d); substituted "criminal

mischief" in subdivision (1)(d) for "malicious mischief"; and made minor changes in phraseology, punctuation and style.

40-2906. "Surety insurance" defined. Surety insurance includes:

(1) fidelity insurance which is insurance guaranteeing the fidelity of persons holding positions of public or private trust;

(2) insurance guaranteeing the performance of contracts, other than insurance policies, and guaranteeing and executing bonds, undertakings, and contracts of suretyship;

(3) insurance indemnifying banks, bankers, brokers, financial or moneyed corporations or associations against check forgery or alteration or against loss resulting from any cause of bills of exchange, bonds, securities, evidences of debt, deeds, mortgages, warehouse receipts, or other valuable papers, documents, money, precious metals, and articles made therefrom, jewelry, watches, necklaces, bracelets, gems, or precious and semiprecious stones, including any loss while the same are being transported in armored motor vehicles, by mail, or by messenger, but not including any other risks of transportation or navigation; also insurance against loss or damage to such an insured's premises or to his furnishings, fixtures, equipment, safes, and vaults therein caused by burglary, robbery, theft, vandalism, or criminal mischief or any attempt thereat.

History: En. Sec. 77, Ch. 286, L. 1959; amd. Sec. 50, Ch. 359, L. 1977.

inal mischief" near the end of subdivision (3) for "malicious mischief"; and made minor changes in phraseology, punctuation and style.

Amendments

The 1977 amendment substituted "crim-

40-2911. Bulk reinsurance, foreign or alien insurers. (1) A foreign or alien insurer may reinsure all or substantially all of its insurance in force in Montana or a major class thereof with an agreement of bulk reinsurance, but no such agreement may become effective unless filed with the commissioner and approved by him in writing after a hearing thereon.

(2) The commissioner shall approve the agreement within a reasonable time after such a hearing unless he finds that it would substantially reduce the protection or service to the policyholders.

(3) The commissioner may require a foreign or alien insurer to establish a trust account in this state, not to exceed the aggregate reserves of the policies contained in the bulk reinsurance agreement, prior to granting approval.

History: En. 40-2911 by Sec. 1, Ch. 303, L. 1977.

reinsurance by a foreign or alien insurer to be approved by the commissioner of insurance and allowing the commissioner to require a deposit.

Title of Act

An act requiring an agreement of bulk

CHAPTER 30—ASSETS AND LIABILITIES

Section 40-3010. Title insurance reserves.

40-3011. Standard valuation law—life insurance.

40-3010. Title insurance reserves. (1) In addition to an adequate reserve as to outstanding losses as required under section 40-3004, a title

insurer shall maintain a guaranty fund or unearned premium reserve of not less than an amount computed as follows:

(a) Ten per cent (10%) of the total amount of the risk premiums written in the calendar year for title insurance contracts shall be assigned originally to the reserve.

(b) During each of the twenty (20) years next following the year in which the title insurance contract was issued, the reserve applicable to the contract shall be reduced by five per cent (5%) of the original amount of such reserve.

(2) The sums herein required to be reserved for unearned premiums on contracts of title insurance shall at all times and for all purposes be considered and constitute unearned portions of the original premiums and shall be held in trust for the benefit of policyholders.

(3) The reduction of the unearned premium reserve required by subsection (1)(b) of this section shall be made for all title insurance contracts issued after December 31, 1958, with respect to which 10% of the risk premiums have been assigned to the reserve pursuant to subsection (1)(a) of this section. In the event that any title insurer has not in accordance with subsection (1)(b) of this section reduced the amount of its unearned premium reserve by 5% of the amount originally assigned to the reserve pursuant to subsection (1)(a) of this section for years ending after December 31, 1958, and before January 1, 1977, the insurer shall effect such reduction for such prior years during its accounting year which includes December 31, 1976.

History: En. Sec. 91, Ch. 286, L. 1959; former subdivisions (1) and (2) as (1) and (1)(b); substituted "the contract shall" for "the contract may" in subdivision (1)(b); and added subsections (2) and (3).
amd. Sec. 1, Ch. 96, L. 1977.

Amendments

The 1977 amendment inserted the subsection (1) designation; redesignated the

40-3011. Standard valuation law—life insurance. (1). * * * [Same as parent volume.]

(2) This subsection shall apply to only those policies and contracts issued prior to the operative date of section 40-3831 (the standard non-forfeiture law).

Except as otherwise provided in (3) (a) (vii) (A) of this section for group annuity and pure endowment contracts, the minimum standard of valuation on all policies of domestic life insurers issued prior to January 1, 1922, shall be the American experience table of mortality and interest at three and one-half per cent (3½%) per annum, with preliminary term insurance for the first policy year, and for policies of such insurers issued subsequent to December 31, 1921, shall be the American experience table of mortality with interest at three and one-half per cent (3½%) per annum, with preliminary term insurance for the first policy year, except as follows: If the premium charged for term insurance under a limited payment life preliminary term policy providing for the payment of all premiums thereon in less than twenty (20) years from the date of the policy, or under an endowment preliminary term policy, exceeds that

charged for life insurance under twenty (20) payment life preliminary term policies of the same insurer, the reserve thereon at the end of any year, including the first, shall not be less than the reserve on a twenty (20) payment life preliminary term policy issued in the same year and at the same age, together with an amount which shall be equivalent to the accumulation of a net level premium reserve sufficient to provide for a pure endowment at the end of the premium payment period equal to the difference between the value at the end of such period of such a twenty (20) payment life preliminary term policy and the full net level premium reserve at such time of such a limited payment life or endowment policy.

Reserves for all such policies and contracts may be calculated, at the option of the insurer, according to any standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by this subsection.

(3) This subsection shall apply to only those policies and contracts issued on or after the operative date of section 40-3831 (the standard nonforfeiture law), except as otherwise provided in (3) (a) (vii) (A) of this section for group annuity and pure endowment contracts issued prior to such operative date.

(a) Except as otherwise provided in (3) (a) (vii) (A) of this section, the minimum standard for the valuation of all such policies and contracts shall be the commissioner's reserve valuation method defined in subdivision (b), three and one-half per cent ($3\frac{1}{2}\%$) interest, or in the case of policies and contracts, other than annuity and pure endowment contracts, issued on or after the effective date of this amendatory act of 1973 and prior to January 1, 1986, four per cent (4%) interest, and the following tables:

(i). * * * [Same as parent volume.]

(ii) For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies,—the 1941 standard industrial mortality table for such policies issued prior to the operative date of subsection (8-b) of section 40-3831 (the standard nonforfeiture law) as amended, and the commissioner's 1961 standard industrial mortality table for such policies issued on or after such operative date.

(iii) to (vi). * * * [Same as parent volume.]

(vii) For group life insurance, life insurance issued on the substandard basis and other special benefits—such tables as may be approved by the commissioner.

(A) The minimum standard for the valuation of all individual annuity and pure endowment contracts issued on the effective date of this subsection, as defined herein, and for all annuities and pure endowments purchased on or after such operative date under group annuity and pure endowment contracts, shall be the commissioner's reserve valuation method defined in (3) (b) of this section and the following tables and interest rates:

(I) For individual annuity and pure endowment contracts issued prior to January 1, 1986, excluding any disability and accidental death

benefits in such contracts, the 1971 individual annuity mortality table, or any modification of this table approved by the commissioner, and six per cent (6%) interest for single premium immediate annuity contracts, and four per cent (4%) interest for all other individual annuity and pure endowment contracts.

(II) For individual annuity and pure endowment contracts issued on or after January 1, 1986, excluding any disability and accidental death benefits in such contracts, the 1971 individual annuity mortality table, or any modification of the table approved by the commissioner, and three and one-half per cent ($3\frac{1}{2}\%$) interest.

(III) For all annuities and pure endowments purchased prior to January 1, 1986, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, the 1971 group annuity mortality table, or any modification of the table approved by the commissioner, and six per cent (6%) interest.

(IV) For all annuities and pure endowments purchased on or after January 1, 1986, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, the 1971 group annuity mortality table, or any modification of this table approved by the commissioner, and three and one-half per cent ($3\frac{1}{2}\%$) interest.

After the effective date of this amendatory act of 1973, any insurer may file with the commissioner a written notice of its election to comply with the provisions of the subsection (A) after a specified date before January 1, 1979, which shall be the operative date of the subparagraph for such insurer provided an insurer may elect a different operative date for individual annuity and pure endowment contracts from that elected for group annuity and pure endowment contracts. If an insurer makes no such election, the operative date of this subparagraph for such insurer shall be January 1, 1979.

(b) and (c). * * * [Same as parent volume.]

(d) Reserves for any category of policies, contracts or benefits as established by the commissioner, may be calculated at the option of the insurer according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided for therein. Provided, however, that reserves for participating life insurance policies may, with the consent of the commissioner, be calculated according to a rate of interest [lower than the rate of interest] used in calculating the nonforfeiture benefits in such policies, with the further proviso that if such lower rate differs from the rate used in the calculation of the nonforfeiture benefits by more than one-half per cent ($\frac{1}{2}\%$) the insurer issuing such policies shall file with the commissioner a plan providing for such equitable increases, if any, in the cash surrender values and nonforfeiture benefits in such policies as the commissioner shall approve.

(e). * * * [Same as parent volume.]

History: En. Sec. 92, Ch. 286, L. 1959; amd. Sec. 1, Ch. 61, L. 1961; amd. Sec. 1, Ch. 41, L. 1965; amd. Sec. 1, Ch. 341, L. 1973.

Compiler's Notes

The effective date of Ch. 341, Laws 1973, was March 17, 1973.

Amendments

The 1965 amendment added at the end of paragraph (3) (a) (ii) the words "for such policies issued prior to the operative date of subsection (8-b) of section 40-3831 (the standard nonforfeiture law) as amended, and the commissioners 1961 standard industrial mortality table for such policies issued on or after such operative date"; and, apparently through clerical error, deleted from paragraph (3) (d) the words enclosed above in brackets.

The 1973 amendment inserted "except as otherwise provided in (3)(a)(vii)(A) of this section for group annuity and pure

endowment contracts" at the beginning of the second paragraph of subsection (2) and at the end of the first paragraph in subsection (3); inserted "Except as otherwise provided in (3)(a)(vii)(A) of this section" to the beginning of subdivision (3)(a); inserted "or in the case of policies and contracts, other than annuity and pure endowment contracts, issued on or after the effective date of this amendatory act of 1973 and prior to January 1, 1986, four per cent (4%) interest" near the end of the preliminary paragraph of subdivision (3)(a); inserted subdivision (3)(a)(vii)(A); and inserted the bracketed words in the proviso to subdivision (3)(d).

Effective Date

Section 2 of Ch. 41, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 22, 1965.

CHAPTER 33—AGENTS, SOLICITORS AND ADJUSTERS

- Section 40-3308. General qualifications, resident agents and solicitors—other than life insurance agents.
- 40-3309. General qualification for license as life or disability insurance agent.
- 40-3310. Licensing of firms and corporations.
- 40-3311. Licensing of resident agents' association.
- 40-3312. Application for license.
- 40-3313. Examination.
- 40-3314. Conduct of examinations.
- 40-3321. Special requirements as to solicitors.
- 40-3324. Reporting and accounting for premiums.
- 40-3327. Adjuster's license—qualifications—catastrophe adjustments.
- 40-3328. Continuance, expiration of licenses.
- 40-3332. Acting as insurance agent, solicitor, or adjuster without license—penalty.
- 40-3333. Nonresident agent may be licensed—reciprocity.
- 40-3334. Nonresident agent's right to solicit business contingent upon reciprocal arrangement.
- 40-3335. Nonresident agent must be licensed in state of residence—limitation as to insurers which may be represented—certification by state of residence.
- 40-3336. Limitations as to coverage.
- 40-3337. Commissioner as attorney in fact of nonresident agent to accept service of process.
- 40-3338. Nonresident agent subject to provisions of the Montana Insurance Code.
- 40-3339. Short title.
- 40-3340. Prohibition.
- 40-3341. Application—fee—expiration.
- 40-3342. Commissioner may issue license—limitations.
- 40-3343. Qualification—fee.
- 40-3344. Commissioner may refuse to issue license.
- 40-3345. Consideration for services only on written memorandum.
- 40-3346. Limitation on type of consideration.
- 40-3347. Licensee may not recommend.
- 40-3348. Nonapplicability.

40-3308. General qualifications, resident agents and solicitors—other than life insurance agents. (1) For the protection of the people of this

state the commissioner shall not issue, continue, or permit to exist any resident agent or solicitor license as to insurance other than life or disability, except in compliance with this chapter, or as to any individual not qualified therefor as follows:

(a) Must be eighteen (18) years of age or more, or, if for a solicitor's license, must be at least eighteen (18) years of age.

(b) Must be a resident in and of this state.

(c) If for a resident agent's license, must have been appointed as agent by an authorized insurer, subject to issuance of the license.

(d) If for a solicitor's license, must have been appointed as solicitor by a licensed resident agent, subject to issuance of the license, and intend to make and make the soliciting of insurance a principal vocation.

(e) to (h). * * * [Same as parent volume.]

(2) In determining the qualifications as to competence, training, experience and knowledge of the provisions of this code governing his operations as a resident insurance agent or solicitor, as provided for in subsection (1) above, of applicant agents or solicitors proposing to represent as such only insurers who confine their business in this state substantially to the insuring of the property, interests and risks of farmers, the commissioner shall relate such qualifications only to the kinds of insurance policies which the applicant will handle as such a licensee.

History: En. Sec. 152, Ch. 286, L. 1959; amd. Sec. 7, Ch. 44, L. 1969; amd. Sec. 5, Ch. 423, L. 1971.

Amendments

The 1969 amendment inserted "resident"

before "agent" where the references appear.

The 1971 amendment reduced the age specified near the beginning of subdivision (1)(a) from 21 to 18 years.

40-3309. General qualification for license as life or disability insurance agent. For the protection of the people of this state the commissioner shall not issue, continue, or permit to exist any agent license as to life or disability insurance except in compliance with this chapter or as to any individual not qualified therefor as follows:

(1). * * * [Same as parent volume.]

(2) Must be a resident in and of this state; or of another state, if by reciprocal arrangements made by the commissioner with such other state similar privileges therein are granted to residents of this state.

(3) to (8). * * * [Same as parent volume.]

History: En. Sec. 153, Ch. 286, L. 1959; amd. Sec. 8, Ch. 44, L. 1969.

Amendments

The 1969 amendment omitted the second

sentence of subsection (2) which designated the commissioner as attorney-in-fact of any nonresident agent for acceptance of service of process.

40-3310. Licensing of firms and corporations. (1). * * * [Same as parent volume.]

(2) A nonresident of Montana shall not be named in such license and shall not have the right to exercise the license powers.

(3) A license shall not be issued to a firm or corporation unless organized under the laws of this state and maintaining its principal place of business in this state, and unless the transaction of business under the license is within the purposes stated in the firm's partnership agreement or the corporation's articles.

(4) The licensee shall promptly notify the commissioner of all changes among its members, directors, and officers and of any other individual designated in the license.

History: En. Sec. 154, Ch. 286, L. 1959; amd. Sec. 9, Ch. 44, L. 1969. tion (2) and redesignated former subsections (2) and (3) as subsections (3) and (4).

Amendments

The 1969 amendment inserted subsec-

40-3311. Licensing of resident agents' association. (1) The commissioner may license as a resident agent as to kinds of insurance other than life and disability, any association of licensed Montana insurance agents, whether or not incorporated, and formed and existing for substantial purposes other than as to such license.

(2) The license shall be used solely for the purpose of enabling any such association to place, as resident agent, insurance of the properties, interests and risks of the state of Montana and of other public agencies, bodies and institutions, and to receive the customary commission thereon.

(3). * * * [Same as parent volume.]

(4) The license powers may be exercised by such resident agents as may be appointed from time to time for the purpose of the association's board of trustees. The association shall forthwith file the names of such appointees with the commissioner. The names of such appointees need not appear in the license.

(5) The fee for such license shall be the same as for the license of an individual resident agent.

(6) Under the license the association may place insurance with any insurer represented as resident agent by any member of the association, and without requiring that the association have an appointment as resident agent by any such insurer; otherwise, the license shall be subject to the same requirements and prohibitions as apply to individual resident agent licenses.

(7) The commissioner may, after a hearing with notice thereof to the association only (and without notice to the individual officers or members of the association), revoke the license if he finds that continuation thereof is not in the public interest, or for such other applicable grounds as are available under this chapter in the case of individuals licensed as resident agents.

History: En. Sec. 155, Ch. 286, L. 1959; amd. Sec. 10, Ch. 44, L. 1969.

Amendments

The 1969 amendment inserted "resident" before "agent" where the references appear.

40-3312. Application for license. (1) to (6) * * * [Same as parent volume.]

(7) If for license as either agent or solicitor, the application shall also show whether applicant was ever previously licensed to transact any kind of insurance in this state or elsewhere; whether any such license was ever refused, suspended or revoked; whether any insurer, general agent or agent (in the case of a solicitor application) claims applicant to be indebted to it, and if so the details thereof and the defenses, if any, of the applicant thereto; whether applicant ever had an agency contract canceled, and the facts thereof; and if applicant is married, like information with respect to the applicant's spouse.

(8) The commissioner shall require as part of the application for license the certificate of an officer or representative of the insurer proposed to be represented (in the case of applicants for license as agent), or of the proposed employing agent (in the case of applicants for license as solicitor) as to whether the applicant is known to such officer or representative, whether the insurer or agent has investigated the character and business record of the applicant and the uses to be made of the license, if granted, and his opinion, based on such investigation, as to applicant's trustworthiness and competence and whether the applicant will use the license principally for the purpose of insuring the applicant's own risks or interests and those of the applicant's relatives or employer.

(9) * * * [Same as parent volume.]

History: En. Sec. 156, Ch. 286, L. 1959;
amd. Sec. 19, Ch. 535, L. 1975.

Amendments

The 1975 amendment substituted "if applicant is married" for "if applicant is a married woman" near the end of subsection (7);

substituted "the applicant's spouse" for "her husband" at the end of subsection (7); substituted "known to such officer or representative" for "known to him" in the middle of subsection (8); and substituted "the applicant's" for "his" near the end of subsection (8).

40-3313. Examination. (1) to (4). * * * [Same as parent volume.]

(5) This section shall not apply to, and no such examination shall be required of:

(a) and (b). * * * [Same as parent volume.]

(c) Any applicant for license as nonresident agent, subject to reciprocal arrangements as provided for in this code.

(d) to (g). * * * [Same as parent volume.]

History: En. Sec. 157, Ch. 286, L. 1959;
amd. Sec. 11, Ch. 44, L. 1969.

Amendments

The 1969 amendment rewrote subdivision (5)(c) which provided exemption from examination for "Nonresident applicants for license as life insurance agents."

40-3314. Conduct of examinations. (1) The commissioner shall make any examination required under section 40-3313 available to applicants with reasonable frequency, and at place in this state reasonably accessible to such applicants. The commissioner shall make any such examination available at his offices at Helena, Montana, at times within his discretion, but at least once a month.

(2) to (4). * * * [Same as parent volume.]

History: En. Sec. 158, Ch. 286, L. 1959;
amd. Sec. 1, Ch. 156, L. 1969.

Effective Date

Section 2 of Ch. 156, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 28, 1969.

Amendments

The 1969 amendment substituted "at times within his discretion, but at least once a month" for "on each business day" at the end of subsection (1).

40-3321. Special requirements as to solicitors. (1) A solicitor shall not be appointed or licensed as to more than one resident agent.

(2) The solicitor's license shall cover all the kinds of insurance, other than life and disability insurance, for which the appointing resident agent is licensed; except, that the solicitor's license shall also cover disability insurance where written by a casualty, property, or surety insurer represented by the resident agent.

(3) A solicitor shall not concurrently be licensed as resident agent except as to life or disability insurance.

(4) A solicitor shall not have authority to bind risks or counter-sign policies.

(5) The transactions of a solicitor under his license shall be in the name of the resident agent by whom appointed, and such resident agent shall be responsible for the acts or omissions of the solicitor within the scope of his appointment.

(6) The solicitor shall maintain his office with that of the appointing resident agent, and records of his transactions under the license shall be maintained as a part of the records of such resident agent.

(7) The solicitor's license shall remain in the custody of the resident agent by whom appointed. Upon termination of the appointment, the resident agent shall give written notice thereof to the commissioner and deliver the license to the commissioner for cancellation.

History: En. Sec. 165, Ch. 286, L. 1959;
amd. Sec. 12, Ch. 44, L. 1969.

Amendments

The 1969 amendment inserted "resident" before "agent" where the references appear.

40-3324. Reporting and accounting for premiums. (1) All premiums or return premiums received by an agent or solicitor shall be trust funds so received by the licensee in a fiduciary capacity, and the agent or solicitor shall in the applicable regular course of business account for and pay the same to the insured, insurer, or agent entitled thereto. If the licensee establishes a separate deposit for funds so belonging to others in order to avoid a commingling of such fiduciary funds with his own funds, he may deposit and commingle in the same such separate deposit all such funds belonging to others so long as the amount of such deposit so held for each respective other person is reasonably ascertainable from the records and accounts of the licensee.

(2) Any agent or solicitor who, not being lawfully entitled thereto, diverts or appropriates such funds or any portion thereof to his own use

is, upon conviction, guilty of theft and shall be punished as provided by law.

History: En. Sec. 168, Ch. 286, L. 1959;
amd. Sec. 51, Ch. 359, L. 1977.

in subsection (2) for "larceny"; and made minor changes in phraseology and punctuation.

Amendments

The 1977 amendment substituted "theft"

40-3327. Adjuster's license—qualifications—catastrophe adjustments.

(1) * * * [Same as parent volume.]

(2) To be licensed as an adjuster the applicant must be qualified therefor as follows:

(a) Must be an individual eighteen (18) years of age or more.

(b) to (e) * * * [Same as parent volume.]

(3) and (4) * * * [Same as parent volume.]

History: En. Sec. 171, Ch. 286, L. 1959;
amd. Sec. 6, Ch. 423, L. 1971.

Amendments

The 1971 amendment reduced the age specified in subdivision (2)(a) from 21 to 18 years.

40-3328. Continuance, expiration of licenses. (1) All solicitor and adjuster licenses issued under this chapter, all agent licenses as to life and/or disability insurance only, and all nonresident agent licenses shall continue in force until expired, suspended, revoked or terminated, but subject to payment to the commissioner annually on or before May 1 of the applicable continuation fee as stated in section 40-2726, accompanied by written request for such continuation. Such request for continuation as to agent licenses for life insurance and/or disability insurance only, shall be made by the insurer in the form of an alphabetical list in duplicate of the names and addresses of its agents whose licenses are to be continued in this state, accompanied by payment of the annual continuation fee therefor as provided in section 40-2726. At the same time the insurer shall also file with the commissioner an alphabetical list in duplicate of the names and addresses of all its agents whose licenses in this state are not to remain in effect. Section 40-3317 (5) shall apply as to any licenses so terminated by the insurer. As to a solicitor's license, such request shall be signed by the agent by whom the licensee is employed.

(2) to (4). * * * [Same as parent volume.]

History: En. Sec. 172, Ch. 286, L. 1959;
amd. Sec. 13, Ch. 44, L. 1969.

Amendments

The 1969 amendment inserted "all non-resident agent licensees" in the first sentence of subsection (1).

40-3332. Acting as insurance agent, solicitor, or adjuster without license—penalty. Any person, firm, association, or corporation who or which, in this state, acts as an insurance agent, solicitor, or adjuster, without having authority to do so by virtue of a license issued and in force pursuant to the provisions of this chapter shall, upon conviction, be guilty of a misdemeanor and fined five hundred dollars (\$500) or imprisoned in the county jail for ninety (90) days, or both such fine and imprisonment.

History: En. 40-3332 by Sec. 1, Ch. 256, L. 1967. **Title of Act**

An act to provide a penalty for operating without a license as an insurance agent, solicitor, or adjuster.

40-3333. Nonresident agent may be licensed—reciprocity. The commissioner may license as an agent a person who is otherwise qualified under this code but who is not a resident of this state, if pursuant to the laws of the state of his residence a similar privilege is extended to persons resident in Montana.

History: En. Sec. 1, Ch. 44, L. 1969.

Title of Act

An act to provide for licensing nonresident insurance agents domiciled in states

which grant reciprocal privileges to Montana agents; amending sections 40-3308 through 40-3311, 40-3313, 40-3321 and 40-3328, R. C. M. 1947, to ensure that such sections apply to resident agents only.

40-3334. Nonresident agent's right to solicit business contingent upon reciprocal arrangement. A licensed nonresident agent shall not have the right to solicit business in Montana unless pursuant to a reciprocal arrangement made by the commissioner with the insurance supervisory official of the licensee's state of residence.

History: En. Sec. 2, Ch. 44, L. 1969.

40-3335. Nonresident agent must be licensed in state of residence—limitation as to insurers which may be represented—certification by state of residence. An applicant for a nonresident license must be licensed in the state of his residence to act as agent for the kinds of insurance for which he applies for licensing in the state of Montana. The nonresident agent shall be licensed to represent only those insurers which he is licensed to represent in the state of his residence and which are licensed in the state of Montana. The insurance supervisory official of the applicant's state of residence must certify that the applicant is licensed and to the extent of the license.

History: En. Sec. 3, Ch. 44, L. 1969.

40-3336. Limitations as to coverage. A nonresident agent shall not sign nor countersign policies covering subjects of insurance located or to be performed in Montana. These policies must be countersigned by a licensed resident agent.

History: En. Sec. 4, Ch. 44, L. 1969.

40-3337. Commissioner as attorney in fact of nonresident agent to accept service of process. Application for and acceptance of a license as a nonresident agent shall constitute irrevocable appointment of the commissioner as the attorney in fact of said licensee to accept service of process issued in Montana in any action or proceeding against the licensee arising out of the licensing or out of transactions under the license. All process shall be served in duplicate upon the commissioner together with a fee of five dollars (\$5). The commissioner shall then promptly forward a copy of the service by registered mail to the li-

censee at his last known address. Such service shall constitute personal service upon the licensee.

History: En. Sec. 5, Ch. 44, L. 1969.

40-3338. Nonresident agent subject to provisions of the Montana Insurance Code. All nonresident licensees shall be subject to the provisions of the Montana Insurance Code as though a resident of this state unless otherwise provided.

History: En. Sec. 6, Ch. 44, L. 1969.

40-3339. Short title. This act may be cited as "The Montana Insurance Consultant Licensure Act."

History: En. 40-3339 by Sec. 1, Ch. 144, L. 1975.

Title of Act

An act to require insurance consultants to acquire a license from the commissioner of insurance; to provide for their licensure; and penalties for violation.

40-3340. Prohibition. (1) Any person not licensed as an insurance consultant in this state who identifies or holds himself out to be an insurance consultant without having been licensed as an insurance consultant under this act; or any person who uses any other designation or title which is likely to mislead the public and holds himself out in any manner as having particular insurance qualifications other than those for which he may be otherwise licensed or otherwise qualified, is guilty of a misdemeanor and upon conviction shall be fined one thousand five hundred dollars (\$1,500).

(2) Any person not licensed as an insurance consultant with respect to the relevant kinds of insurance who receives any fee for examining, appraising, reviewing, or evaluating any insurance policy, annuity or pension contract, plan or program or who shall make recommendations or give advice with regard to any of the above without first having been licensed by the commissioner as an insurance consultant is guilty of a misdemeanor and upon conviction shall be fined one thousand five hundred dollars (\$1,500).

History: En. 40-3340 by Sec. 2, Ch. 144, L. 1975.

40-3341. Application—fee—expiration. Before an insurance consultant's license is issued or renewed the prospective licensee shall: (1) properly file in the office of the commissioner a written application on forms the commissioner prescribes, and

(2) pay a fee of fifty dollars (\$50). Every consultant's license shall expire on the thirty-first day of May next following the date of issue.

History: En. 40-3341 by Sec. 3, Ch. 144, L. 1975.

40-3342. Commissioner may issue license—limitations. The commissioner may issue an insurance consultant's license to any natural person who has complied with the requirements of this chapter with respect to

either (1) life insurance, meaning all of those kinds of insurance authorized in sections 40-2902, 40-2903, 40-3901, 40-4101, 40-4104, 40-4204 or (2) general insurance, meaning all of those kinds of insurance authorized in sections 40-2903 through 40-2908 inclusive, as specified in such license.

History: En. 40-3342 by Sec. 4, Ch. 144, L. 1975.

40-3343. Qualification—fee. (1) In order to determine the competency of every applicant for license as an insurance consultant, the commissioner shall require membership in one or more of the following: the American college of life underwriters, the American college of property and liability underwriters, the society of actuaries, the casualty actuarial society, or the American academy of actuaries, or require the applicant to pass an examination.

(2) The fee for taking such an examination shall be \$50. The commissioner shall deposit all fees collected in the general fund. The fee for taking a second or subsequent examination shall be no more than the cost of administering such examination, not to exceed \$50.

History: En. 40-3343 by Sec. 5, Ch. 144, L. 1975; amd. Sec. 1, Ch. 146, L. 1977.

Amendments

The 1977 amendment inserted the subsection (1) designation and added subsection (2).

40-3344. Commissioner may refuse to issue license. The commissioner may refuse to issue an insurance consultant's license if, in his judgment, the applicant is not trustworthy and competent to act as a consultant, or has given cause for revocation or suspension of a license, or has failed to comply with any prerequisite for the issuance of a license. The commissioner may revoke or suspend any insurance consultant's license for a period he determines, if, after notice and hearing as specified in this chapter, he determines that the licensee:

(a) has violated any provision of, or any obligation imposed by, the insurance law, or has violated any law in the course of his dealings as a consultant; or

(b) has made a material misstatement in application for a consultant's license; or

(c) has been guilty of fraudulent or dishonest practices; or

(d) has demonstrated his incompetency or untrustworthiness to act as an insurance consultant.

History: En. 40-3344 by Sec. 6, Ch. 144, L. 1975.

40-3345. Consideration for services only on written memorandum. No person licensed as an insurance consultant under this act may receive any fee for examining, appraising, reviewing or evaluating any insurance policy, bond, annuity or pension or profit-sharing contract, plan or program or for making recommendations or giving advice with regard to any of the above, unless the compensation is based upon a written memorandum signed by the party to be charged and specifying or clearly

defining the amount or extent of the compensation. A copy of every memorandum or contract shall be retained by the licensee for not less than three years after those services have been fully performed.

History: En. 40-3345 by Sec. 7, Ch. 144, L. 1975.

40-3346. Limitation on type of consideration. No person licensed as an insurance consultant may receive any compensation, direct or indirect, as a result: (a) of the sale of insurance or annuities to, or (b) the use of securities or trusts in connection with pensions for, any person to whom any licensee has performed any related consulting service for which he has received a fee or contracted to receive a fee within the preceding twelve (12) months.

History: En. 40-3346 by Sec. 8, Ch. 144, L. 1975.

40-3347. Licensee may not recommend. No person licensed as an insurance consultant under this section may recommend or encourage the purchase of insurance, annuities or securities from any authorized insurer in which he or any member of his immediate family holds an executive position or holds a substantial interest.

History: En. 40-3347 by Sec. 9, Ch. 144, L. 1975.

40-3348. Nonapplicability. Nothing in this act applies to: (1) licensed attorneys at law in this state acting in their professional capacity; or

(2) an actuary or a certified public accountant who provides information, recommendations, advice or services in his professional capacity, if neither he nor his employer receives any compensation directly or indirectly on account of any insurance, bond, annuity or pension contract that results in whole or part from that information, recommendation, advice or services.

History: En. 40-3348 by Sec. 10, Ch. 144, L. 1975.

CHAPTER 34—UNAUTHORIZED INSURERS AND SURPLUS LINES

Section 40-3427. Report and tax of independently procured coverages.

40-3427. Report and tax of independently procured coverages. (1) and (2) * * * [Same as parent volume.]

(3) For the general support of the government of this state there is levied upon the obligation, chose in action, or right represented by the premium charged or payable for such insurance, a tax at the rate of $2\frac{3}{4}\%$ of the gross amount of such premium. The insured shall withhold the amount of the tax from the amount of premium charged by and otherwise payable to the insurer for such insurance, and within thirty (30) days after the insurance was so procured, continued or renewed, and coincidentally with the filing with the commissioner of the report provided

for in subsection (1) above, the insured shall pay the amount of the tax to the state treasurer through the commissioner.

(4) to (8) * * * [Same as parent volume.]

History: En. Sec. 202, Ch. 286, L. 1959; **Amendments**
amd. Sec. 1, Ch. 147, L. 1977.

The 1977 amendment increased the premium tax in the first sentence of subsection (3) from 2% to 2 3/4%.

CHAPTER 35—TRADE PRACTICES AND FRAUDS

- Section 40-3501. Purposes of trade practices law.
 40-3502.1. Unfair claim settlement practices.
 40-3502.2. Failure to maintain complaint handling procedures.
 40-3502.3. Power of the commissioner.
 40-3506. False financial statements.
 40-3512. Unfair discrimination, rebates prohibited—property, casualty, surety insurances.
 40-3514. Desist orders for prohibited practices.
 40-3514.1. Penalty for violation of cease and desist orders.
 40-3516.1. Favored agent or insurer—coercion of debtors.
 40-3520. Fictitious groups.

40-3501. Purposes of trade practices law. The purpose of this chapter is to regulate trade practices in the business of insurance in accordance with the intent of Congress as expressed in P.L. 79-15, which was approved March 9, 1945, by defining or providing for determination of all such practices in this state which constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined.

History: En. Sec. 203, Ch. 286, L. 1959;
amd. Sec. 6, Ch. 320, L. 1977.

Claims Administration

Amendments

The 1977 amendment substituted "this chapter" near the beginning of the section for "sections 40-3501 through 40-3515"; and made minor changes in phraseology and punctuation.

This chapter was never intended to regulate the investigation, settlement, and negotiation of automobile insurance claims. State ex rel. Cashen v. District Court, 157 M 40, 482 P 2d 567.

40-3502.1. Unfair claim settlement practices. No person may, with such frequency as to indicate a general business practice, do any of the following:

- (1) misrepresent pertinent facts or insurance policy provisions relating to coverages at issue;
- (2) fail to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;
- (3) fail to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;
- (4) refuse to pay claims without conducting a reasonable investigation based upon all available information;
- (5) fail to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;
- (6) neglect to attempt in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear;

(7) compel insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds;

(8) attempt to settle a claim for less than the amount to which a reasonable man would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application;

(9) attempt to settle claims on the basis of an application which was altered without notice to or knowledge or consent of the insured;

(10) make claims payments to insureds or beneficiaries not accompanied by statements setting forth the coverage under which the payments are being made;

(11) make known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;

(12) delay the investigation or payment of claims by requiring an insured, claimant, or physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;

(13) fail to promptly settle claims, if liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage; or

(14) fail to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

History: En. 40-3502.1 by Sec. 1, Ch. 320, L. 1977.

agent practices, and enforcement procedures and penalties; amending sections 40-3501, 40-3512, and 40-3514, R. C. M. 1947; repealing section 40-3516, R. C. M. 1947.

Title of Act

An act to generally revise the laws on unfair insurance claim settlement, favored

40-3502.2. Failure to maintain complaint handling procedures. (1) An insurer shall maintain a complete record of all the complaints which it has received since the date of its last examination under 40-2713. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of the complaints, and the time it took to process each complaint.

(2) For purposes of this section, "complaint" means any written communication primarily expressing a grievance.

History: En. 40-3502.2 by Sec. 2, Ch. 320, L. 1977.

40-3502.3. Power of the commissioner. The commissioner may examine and investigate the affairs of every person engaged in the business of insurance in this state in order to determine whether such person has

been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by this chapter.

History: En. 40-3502.3 by Sec. 3, Ch. 320, L. 1977.

40-3506. False financial statements. (1). * * * [Same as parent volume.]

(2) No person shall make any false entry in any book, report or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to whom such insurer is required by law to report, or who has authority by law to examine into its condition or into any of its affairs, or, with like intent, willfully omit to make a true entry of any material fact pertaining to the business of such insurer in any book, report or statement of such insurer, and any person who aids or abets in any such violation of this section shall be punishable, upon conviction, by a fine of one thousand dollars (\$1,000) or by imprisonment in the county jail for six (6) months, or both such fine and imprisonment.

History: En. Sec. 208, Ch. 268, L. 1959; person who aids or abets * * * or both
amd. Sec. 1, Ch. 29, L. 1967. such fine and imprisonment" at the end
of the section.

Amendments

The 1967 amendment added "and any

40-3512. Unfair discrimination, rebates prohibited—property, casualty, surety insurances. (1) No title, property, casualty, or surety insurer or any employee, representative, agent, or solicitor thereof may, as an inducement to purchase insurance or after insurance has been effected, pay, allow, or give or offer to pay, allow, or give, directly or indirectly, any rebate, discount, abatement, credit, or reduction of the premium named in the insurance policy; any special favor or advantage in the dividends or other benefits to accrue thereon; or any valuable consideration or inducement not specified in the policy, except to the extent provided for in an applicable filing with the commissioner as provided by law.

(2) No insured named in a policy or any employee of the insured may knowingly receive or accept, directly or indirectly, any such rebate, discount, abatement, credit, or reduction of premium; special favor or advantage; or valuable consideration or inducement.

(3) No such insurer may make or permit any unfair discrimination in the premium or rates charged for insurance, in the dividends or other benefits payable thereon, or in any other of the terms and conditions of the insurance either between insureds or property having like insuring or risk characteristics or between insureds because of race, color, creed, religion, or national origin.

(4) Nothing in this section may be construed as prohibiting the payment of commissions or other compensation to duly licensed agents or solicitors or as prohibiting an insurer from allowing or returning lawful dividends, savings, or unabsorbed premium deposits to its participating policyholders, members, or subscribers.

History: En. Sec. 214, Ch. 286, L. 1959; amd. Sec. 1, Ch. 191, L. 1969; amd. Sec. 5, Ch. 38, L. 1977; amd. Sec. 8, Ch. 320, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 38 and once by Ch. 320. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

The 1969 amendment inserted "either" after "unfair discrimination" and "or between insureds because of race, color, creed, or national origin," after "risk characteristics" in subsection (3).

Chapter 38, Laws of 1977, inserted "religion" near the end of subsection (3); and made minor changes in phraseology, punctuation and style.

Chapter 320, Laws of 1977, inserted "title" near the beginning of the section.

Repealing Clause

Section 9 of Ch. 320, Laws 1977 read "Section 40-3516, R. C. M. 1947, is repealed."

Pro Rata Clause

Where insured bought crop damage insurance policy containing prorata clause which limited insurer's liability to the same proportion of the loss as its policy bore to the total insurance against the loss sustained, but charged the same premium as if full coverage had been obtained, there was a violation of this section, because insured in effect got less insurance for his money than did other policyholders. *McCarter v. Glacier General Assurance Co.*, — M —, 546 P 2d 249.

40-3514. Desist orders for prohibited practices. (1) to (4) * * *
[Same as parent volume.]

(5) This section shall not be deemed to affect or prevent the imposition of any penalty provided by this code or by other law for violation of any other provision of this chapter, whether or not any such hearing is called or held or such desist order issued.

History: En. Sec. 216, Ch. 286, L. 1959; amd. Sec. 7, Ch. 320, L. 1977.

Amendments

The 1977 amendment deleted a former

subsection (5) which read "Violation of any such desist order shall be deemed to be and shall be punishable as a violation of this code"; and redesignated former subsection (6) as subsection (5).

40-3514.1. Penalty for violation of cease and desist orders. (1) Any person who violates a cease and desist order issued pursuant to 40-3514 is subject to a civil penalty not to exceed \$1,000. Each day of violation constitutes a separate violation. The total penalty may not exceed a \$10,000 aggregate. The department may institute and maintain in the name of the state any enforcement proceedings hereunder. Upon request of the department, the attorney general or the county attorney of the county in which the violation occurred shall petition the district court to impose, assess, and recover the civil penalty.

(2) An action under subsection (1) of this section is not a bar to enforcement of this chapter or rules or orders made under it by injunction or other appropriate remedies.

(3) Moneys collected hereunder shall be deposited in the state general fund.

History: En. 40-3514.1 by Sec. 4, Ch. 320, L. 1977.

40-3516. Repealed.

Repeal

Section 40-3516 (Sec. 218, Ch. 286, L. 1959), relating to favored agent or in-

surer, was repealed by Sec. 9, Ch. 320, Laws 1977.

40-3516.1. Favored agent or insurer—coercion of debtors. (1) No person may require as a condition precedent to the lending of money or extension of credit or any renewal thereof that the person to whom such money or credit is extended or whose obligation a creditor is to acquire or finance negotiate any contract of insurance or renewal thereof through a particular insurer or group of insurers or agent or solicitor or group of agents or solicitors.

(2) No person who lends money or extends credit may:

(a) solicit insurance for the protection of real property, after a person indicates interest in securing a first-mortgage credit extension, until such person has received a commitment in writing from the lender as to a loan or credit extension;

(b) unreasonably reject a contract of insurance furnished by the borrower for the protection of the property securing the credit or lien. A rejection is not unreasonable if it is based on reasonable standards, uniformly applied, relating to the extent of coverage required and the financial soundness and the services of an insurer. Such standards may not discriminate against any particular type of insurer or call for rejection of an insurance contract because the contract contains coverage in addition to that required by the credit transaction.

(c) require that any borrower, mortgagor, purchaser, insurer, solicitor, or agent pay a separate charge in connection with the handling of any contract of insurance required as security for a loan on real estate or pay a separate charge to substitute the insurance policy of one insurer for that of another. This subsection (2)(c) does not include the interest which may be charged on premium loans or premium advancements in accordance with the terms of the loan or credit document.

(d) use or disclose, without the prior written consent of the borrower, mortgagor, or purchaser, information taken at a time other than the making of the loan or extension of credit relative to a contract of insurance which is required by the credit transaction, for the purpose of replacing such insurance;

(e) require any procedures or conditions of licensed agents, solicitors, or insurers not customarily required of those agents, solicitors, or insurers affiliated or in any way connected with the person who lends money or extends credit.

(3) Each person who lends money or extends credit and who solicits insurance on real and personal property subject to subsection (2) of this section must explain to the borrower in writing that the insurance related to such credit extension may be purchased from an insurer or agent of the borrower's choice, subject only to the lender's right to reject a given insurer or agent as provided in subsection (2)(b). Compliance with disclosures as to insurance required by truth-in-lending laws or comparable state laws shall be compliance with this subsection.

(4) The commissioner may examine and investigate those insurance-related activities of any person which may be in violation of this section. Any affected person may submit to the commissioner a complaint or material pertinent to the enforcement of this section.

(5) Nothing herein prevents a person who lends money or extends credit from placing insurance on real or personal property in the event the mortgagor, borrower, or purchaser has failed to provide required insurance in accordance with the terms of the loan or credit document.

(6) Nothing contained in this section applies to credit life or credit accident and health insurance.

History: En. 40-3516.1 by Sec. 5, Ch. 320, L. 1977.

40-3520. Fictitious groups. (1) and (2) * * * [Same as parent volume.]

(3) This section does not apply to life insurance, disability insurance, workers' compensation insurance written for industry or business associations, or annuity contracts. However, workers' compensation group insurance rates are subject to all applicable provisions of Title 40, chapter 56.

History: En. Sec. 222, Ch. 286, L. 1959; amd. Sec. 1, Ch. 292, L. 1977.

ers' compensation insurance written for industry or business associations" in subsection (3); and added the last sentence to subsection (3).

Amendments

The 1977 amendment inserted "work-

CHAPTER 36—RATES AND RATING ORGANIZATIONS

- Section 40-3634. Purpose and intent of chapter.
 40-3635. "Rating organization" defined.
 40-3636. "Advisory organization" defined.
 40-3637. "Member" and "subscriber" defined.
 40-3638. "Willful" and "willfully" defined.
 40-3639. Scope of chapter.
 40-3640. Standards applicable to rates.
 40-3641. Insurers authorized to act in concert.
 40-3642. Admitted insurers with common ownership or management—matters relating to cosurety bonds.
 40-3643. Use of rates, rating systems, underwriting rules and policy or bond forms of rating or advisory organizations—agreements to adhere thereto.
 40-3644. Exchange of information or experience data—consultation with rating organizations and insurers.
 40-3645. Agreements for apportionment of casualty insurance—approval of commissioner—review of practices of adherents—revocation of approval.
 40-3646. Joint underwriters and reinsurers.
 40-3647. Rating organizations.
 40-3648. Evidence prerequisite to license.
 40-3649. Examination of application and investigation of applicant—issuance of license—fee.
 40-3650. Rules governing eligibility for membership.
 40-3651. Insurers with common ownership or management.
 40-3652. Advisory organizations.
 40-3653. Joint underwriting and joint reinsurance.
 40-3654. Maintenance of records—rates to be filed.
 40-3655. Records and examination.
 40-3656. Examination of admitted insurers.
 40-3657. Examination of officers, managers, agents and employees.
 40-3658. Payment of cost of examination.
 40-3659. Review of rates.
 40-3660. Noncompliance of rates.
 40-3661. Hearings.

- 40-3662. Issuance of order—suspension or revocation of certificate of authority or license.
- 40-3663. Failure to comply with order—suspension or revocation of license or certificate.
- 40-3664. Appeals from the commissioner.
- 40-3665. Information not to be willfully withheld.
- 40-3666. Payment of dividends, etc., not prohibited or regulated—plan for payment not rating system.
- 40-3667. Acts, etc., done by authority of chapter not violation of other laws.
- 40-3668. Administration or enforcement of chapter—supplementation or modification.
- 40-3669. Recording and reporting of loss and expense experience.

40-3601 to 40-3633. Repealed.

Repeal

Sections 40-3601 to 40-3633 (Secs. 225 to 257, Ch. 286, L. 1959), relating to the

regulation of insurance rates, were repealed by Sec. 37, Ch. 362, Laws 1969.

40-3634. **Purpose and intent of chapter.** The purpose of this chapter is to promote the public welfare by regulating insurance rates as herein provided to the end that they shall not be excessive, inadequate or unfairly discriminatory, to authorize the existence and operation of qualified rating organizations and advisory organizations and require that specified rating services of such rating organizations be generally available to all admitted insurers, and to authorize co-operation between insurers in rate-making and other related matters.

It is the express intent of this chapter to permit and encourage competition between insurers on a sound financial basis, and nothing in this chapter is intended to give the commissioner power to fix and determine a rate level by classification or otherwise.

History: En. Sec. 1, Ch. 362, L. 1969.

Title of Act

An act to provide for regulation of insurance rates and rating organizations, ad-

visory organizations and joint underwriting and joint reinsurance; and repealing sections 40-3601 through 40-3633, R. C. M. 1947.

40-3635. **“Rating organization” defined.** In this chapter “rating organization” means every person, other than an admitted insurer, whether located within or outside this state, who has as his object or purpose the making of rates, rating plans or rating systems. Two or more admitted insurers which act in concert for the purpose of making rates, rating plans or rating systems, and which do not operate within the specific authorizations contained in sections 9, 11, 12, 20 and 21 [40-3642, 40-3644, 40-3645, 40-3653 and 40-3654] shall be deemed to be a rating organization. No single insurer shall be deemed to be a rating organization.

History: En. Sec. 2, Ch. 362, L. 1969.

40-3636. **“Advisory organization” defined.** In this chapter “advisory organization” means every person, other than an admitted insurer, whether located within or outside this state, who prepares policy forms or makes underwriting rules incident to but not including the making of rates, rating plans or rating systems, or which collects and furnishes to admitted insurers or rating organizations loss or expense statistics

or other statistical information and data and acts in an advisory, as distinguished from a rate-making, capacity. No duly authorized attorney at law, acting in the usual course of his profession, shall be deemed to be an advisory organization.

History: En. Sec. 3, Ch. 362, L. 1969.

40-3637. "Member" and "subscriber" defined. Unless otherwise apparent from the context, in this chapter:

(a) "Member" means an insurer who participates in or is entitled to participate in the management of a rating, advisory or other organization.

(b) "Subscriber" means an insurer which is furnished at its request (1) with rates and rating manuals by a rating organization of which it is not a member; or (2) with advisory services by an advisory organization of which it is not a member.

History: En. Sec. 4, Ch. 362, L. 1969.

40-3638. "Willful" and "willfully" defined. In this chapter "willful" or "willfully," in relation to an act or omission which constitutes a violation of this chapter, means with actual knowledge or belief that such act or omission constitutes such violation and with specific intent to commit such violation.

History: En. Sec. 5, Ch. 362, L. 1969.

40-3639. Scope of chapter. This chapter applies to all insurers and all kinds of insurance, except that nothing contained in this chapter shall apply to:

(1) Life insurance.

(2) Disability insurance.

(3) Reinsurance, except joint reinsurance as provided in section 20 [40-3653] of this chapter.

(4) Insurance against loss of or damage to aircraft, their hulls, accessories and equipment, or against liability, other than workers' compensation and employers' liability, arising out of the ownership, maintenance or use of aircraft.

(5) Insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance policies.

(6) Title insurance.

History: En. Sec. 6, Ch. 362, L. 1969; amd. Sec. 1, Ch. 558, L. 1977.

Amendments

The 1977 amendment substituted "work-

ers'" in subdivision (4) for "workmen's"; and deleted a former subdivision (7) reading "Workmen's compensation or employers' liability insurance written in connection with workmen's compensation."

40-3640. Standards applicable to rates. The following standards shall apply to the making and use of rates pertaining to all classes of insurance to which the provisions of this chapter are applicable:

(a) Rates shall not be excessive or inadequate, as herein defined, nor shall they be unfairly discriminatory.

No rate shall be held to be excessive unless (1) such rate is unreasonably high for the insurance provided, and (2) a reasonable degree of

competition does not exist in the area with respect to the classification to which such rate is applicable.

No rate shall be held to be inadequate unless (1) such rate is unreasonably low for the insurance provided, and (2) the continued use of such rate endangers the solvency of the insurer using the same, or unless (3) such rate is unreasonably low for the insurance provided and the use of such rate by the insurer using same has, or if continued will have, the effect of destroying competition or creating a monopoly.

(b) Consideration shall be given, to the extent applicable, to past and prospective loss experience within and outside this state, to revenues and profits from reserves, to conflagration and catastrophe hazards, if any, to a reasonable margin for underwriting profit and contingencies, to past and prospective expenses, both country-wide and those specially applicable to this state, and to all other factors, including judgment factors, deemed relevant within and outside this state; and in the case of fire insurance rates, consideration may be given to the experience of the fire insurance business during the most recent five-year period for which such experience is available.

Consideration may also be given in the making and use of rates to dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers.

(c) The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the operating methods of any such insurer or group with respect to any kind of insurance, or with respect to any subdivision or combination thereof.

(d) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any difference among risks that have a probable effect upon losses or expenses. Classifications or modifications of classifications of risks may be established based upon size, expense, management, individual experience, location or dispersion of hazard, or any other reasonable considerations, except that no special risk classification may be established based on anything adverse to the insured in a driving record which is three (3) years old or older. Such classifications and modifications shall apply to all risks under the same or substantially the same circumstances or conditions.

History: En. Sec. 7, Ch. 362, L. 1969; amd. Sec. 1, Ch. 54, L. 1973; amd. Sec. 1, Ch. 104, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 54 and once by Ch. 104. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 54, Laws of 1973, added "except that no special risk classification may be established on anything adverse to the insured in a driving record which is three (3) years old or older" at the end of the fourth sentence of subdivision (d).

Chapter 104, Laws of 1973, inserted "to revenues and profits from reserves," near the beginning of subdivision (b).

40-3641. Insurers authorized to act in concert. Subject to and in compliance with the provisions of this chapter authorizing insurers to be members or subscribers of rating or advisory organizations or to engage in joint underwriting or joint reinsurance, two or more insurers may act in concert with each other and with others with respect to any matters pertaining to the making of rates or rating systems, the preparation or making of insurance policy or bond forms, underwriting rules, surveys, inspections and investigations, the furnishing of loss or expense statistics or other information and data, or carrying on of research.

History: En. Sec. 8, Ch. 362, L. 1969.

40-3642. Admitted insurers with common ownership or management—matters relating to cosurety bonds. With respect to any matters pertaining to the making of rates or rating systems, the preparation or making of insurance policy or bond forms, underwriting rules, surveys, inspections and investigations, the furnishing of loss or expense statistics or other information and data, or carrying on of research, two or more admitted insurers having a common ownership or operating in this state under common management or control, are hereby authorized to act in concert between or among themselves the same as if they constituted a single insurer, and to the extent that such matters relate to cosurety bonds, two or more admitted insurers executing such bonds are hereby authorized to act in concert between or among themselves the same as if they constituted a single insurer.

History: En. Sec. 9, Ch. 362, L. 1969.

40-3643. Use of rates, rating systems, underwriting rules and policy or bond forms of rating or advisory organizations—agreements to adhere thereto. Members and subscribers of rating or advisory organizations may use the rates, rating systems, underwriting rules or policy or bond forms of such organizations, either consistently or intermittently, but, except as provided in 40-3642, 40-3645, 40-3653, 40-3654 and 40-5616, shall not agree with each other or rating organizations or others to adhere thereto. The fact that two or more admitted insurers, whether or not members or subscribers of a rating or advisory organization, use, either consistently or intermittently, the rates or rating systems made or adopted by a rating organization, or the underwriting rules or policy or bond forms prepared by a rating or advisory organization, shall not be sufficient in itself to support a finding that an agreement to so adhere exists, and may be used only for the purpose of supplementing or explaining direct evidence of the existence of any such agreement.

History: En. Sec. 10, Ch. 362, L. 1969; 5616" in the first sentence; and made
amd. Sec. 2, Ch. 558, L. 1977. minor changes in phraseology and punctuation.

Amendments

The 1977 amendment inserted "and 40-

40-3644. Exchange of information or experience data—consultation with rating organizations and insurers. Licensed rating organizations

and admitted insurers are authorized to exchange information and experience data with rating organizations and insurers in this and other states and may consult with them with respect to rate-making and the application of rating systems.

History: En. Sec. 11, Ch. 362, L. 1969.

40-3645. Agreements for apportionment of casualty insurance—approval of commissioner—review of practices of adherents—revocation of approval. (a) Agreements may be made among admitted insurers with respect to the equitable apportionment among them of casualty insurance which may be afforded applicants who are in good faith entitled to, but who are unable to procure, such insurance through ordinary methods, and with respect to the use of reasonable rate modifications for such insurance, such agreements to be subject to the approval of the commissioner.

(b) All such agreements shall be submitted in writing to the commissioner for his consideration and approval, together with such information as he may reasonably require. The commissioner shall approve only such agreements as are found by him to contemplate (a) the use of rates which meet the standards prescribed by this chapter, and (b) activities and practices that are not unfair, unreasonable or otherwise inconsistent with the provisions of this chapter.

At any time after such agreements are in effect the commissioner may review the practices and activities of the adherents to such agreements and if, after a hearing upon not less than ten (10) days' notice to such adherents, he finds that any such practice or activity is unfair or unreasonable, or is otherwise inconsistent with the provisions of this chapter, he may issue a written order to the parties to any such agreement, specifying in what respects such act or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, and requiring the discontinuance of such activity or practice. For good cause, and after hearing upon not less than ten (10) days' notice to the adherents thereto, the commissioner may revoke approval of any such agreement.

History: En. Sec. 12, Ch. 362, L. 1969.

40-3646. Joint underwriters and reinsurers. Upon compliance with the provisions of this chapter applicable thereto any rating organization, advisory organization, and any group, association or other organization of admitted insurers which engages in joint underwriting or joint reinsurance through such organization or by standing agreement among the members thereof, may conduct operations in this state. As respects insurance risks or operations in this state, no insurer shall be a member or subscriber of any such organization, group or association that has not complied with the provisions of this chapter applicable to it.

History: En. Sec. 13, Ch. 362, L. 1969.

40-3647. Rating organizations. No rating organization shall conduct its operations in this state without first filing with the commissioner a

written application for, and securing a license to act as, a rating organization. Any rating organization may make application for and obtain a license as a rating organization if it shall meet the requirements for license set forth in this chapter. Every such rating organization shall file with its application (a) a copy of its constitution, its articles of incorporation, agreement or association, and of its bylaws, rules and regulations governing the conduct of its business, all duly certified by the custodian or the originals thereof, (b) a list of its members and subscribers, (c) the name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting such rating organization may be served, and (d) a statement of its qualifications as a rating organization.

History: En. Sec. 14, Ch. 362, L. 1969.

40-3648. Evidence prerequisite to license. To obtain and retain a license, a rating organization shall provide satisfactory evidence to the commissioner that it will:

(a) Permit any admitted insurer to become a member of or a subscriber to such rating organization at a reasonable cost and without discrimination, or withdraw therefrom.

(b) Neither have nor adopt any rule or exact any agreement, the effect of which would be to require any member or subscriber, as a condition to membership or subscribership, to adhere to its rates, rating plans, rating systems, underwriting rules or policy or bond forms.

(c) Neither adopt any rule nor exact any agreement, the effect of which would be to prohibit or regulate the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers.

(d) Neither practice nor sanction any plan or act of boycott, coercion or intimidation.

(e) Neither enter into nor sanction any contract or act by which any person is restrained from lawfully engaging in the insurance business.

(f) Notify the commissioner promptly of every change in its constitution, its articles of incorporation, agreement or association, and of its bylaws, rules and regulations governing the conduct of its business; its list of members and subscribers; and the name and address of the resident of this state designated by it upon whom notices or orders of the commissioner or process affecting such organization may be served.

(g) Comply with the provisions of section 21 [40-3654].

History: En. Sec. 15, Ch. 362, L. 1969.

40-3649. Examination of application and investigation of applicant—issuance of license—fee. The commissioner shall examine each application for license to act as a rating organization and the documents filed therewith and may make such further investigation of the applicant, its affairs and its proposed plan of business as he deems desirable.

The commissioner shall issue the license applied for within sixty (60) days of its filing with him if, from such examination and investigation, he is satisfied that:

- (a) The business reputation of the applicant and its officers is good.
- (b) The facilities of the applicant are adequate to enable it to furnish the services it proposes to furnish.
- (c) The applicant and its proposed plan of operation conform to the requirements of this chapter.

Otherwise, but only after hearing upon notice the commissioner shall, in writing, deny the application and notify the applicant of his decision and his reasons therefor.

The commissioner may grant an application in part only and issue a license to act as a rating organization for one or more of the classes of insurance or subdivisions thereof or class of risk, or a part or combination thereof as are specified in the application, if the applicant qualifies for only a portion of the classes applied for.

Licenses issued pursuant to this section shall remain in effect until revoked as provided in this chapter. The fee for the license shall be one hundred dollars (\$100) annually which shall be deposited in the general fund.

History: En. Sec. 16, Ch. 362, L. 1969;
amd. Sec. 1, Ch. 206, L. 1973.

Amendments

The 1973 amendment added the second sentence to the final paragraph.

40-3650. Rules governing eligibility for membership. Subject to the approval of the commissioner, licensed rating organizations may make reasonable rules governing eligibility for membership.

History: En. Sec. 17, Ch. 362, L. 1969.

40-3651. Insurers with common ownership or management. If two or more insurers having a common ownership or operating in this state under common management are admitted for the classes or types of insurance for which a rating organization is licensed to make rates, the rating organization may require as a condition to membership or subscribership of one or more that all such insurers shall become members or subscribers.

History: En. Sec. 18, Ch. 362, L. 1969.

40-3652. Advisory organizations. No advisory organization shall conduct its operations in this state unless and until it has filed with the commissioner (a) a copy of its constitution, articles of incorporation, agreement or association, and of its bylaws or rules and regulations governing its activities, all duly certified by the custodian of the originals thereof; (b) a list of its members and subscribers; and (c) the name and address of a resident of this state upon whom notices or orders of the commissioner or process may be served.

Every such advisory organization shall notify the commissioner promptly of every change in its constitution, its articles of incorpora-

tion, agreement or association, and of its bylaws, rules and regulations governing the conduct of its business; its list of members and subscribers; and the name and address of the resident of this state designated by it upon whom notices or orders of the commissioner or process affecting such organization may be served.

No such advisory organization shall engage in any unfair or unreasonable practice with respect to such activities.

History: En. Sec. 19, Ch. 362, L. 1969.

40-3653. Joint underwriting and joint reinsurance. Every group, association or other organization of insurers which engages in joint underwriting or joint reinsurance through such group, association or organization, or by standing agreement among the members thereof, shall file with the commissioner (a) a copy of its constitution, its articles of incorporation, agreement or association, and of its bylaws, rules and regulations governing its activities, all duly certified by the custodian of the originals thereof, (b) a list of its members, and (c) the name and address of a resident of this state upon whom notices or orders of the commissioner or process may be served.

Every such group, association or other organization shall notify the commissioner promptly of every change in its constitution, its articles of incorporation, agreement or association, and its bylaws, rules and regulations governing the conduct of its business; its list of members; and the name and address of the resident of this state designated by it upon whom notices or orders of the commissioner or process affecting such group, association or organization may be served.

No such group, association or organization shall engage in any unfair or unreasonable practice with respect to such activities.

History: En. Sec. 20, Ch. 362, L. 1969.

40-3654. Maintenance of records—rates to be filed. (1) Every insurer, rating organization or advisory organization, and every group, association or other organization of insurers which engages in joint underwriting or joint reinsurance shall maintain reasonable records, of the type and kind reasonably adapted to its method of operation, of its experience or the experience of its members, and of the data, statistics or information collected or used by it in connection with the rates, rating plans, rating systems, underwriting rules, policy or bond forms, surveys or inspections made or used by it, so that such records will be available at all reasonable times to enable the commissioner to determine whether such organization, insurer, group or association, and, in the case of an insurer or rating organization, every rate, rating plan and rating system made or used by it, complies with the provisions of this chapter applicable to it. The maintenance of such records in the office of a licensed rating organization of which an insurer is a member or subscriber will be sufficient compliance with this section for any insurer maintaining membership or subscribership in such organization, to the extent that the insurer uses the rates, rating plans, rating systems or underwriting rules of such organization. Such

records shall be maintained in an office within this state or shall be made available for examination or inspection within this state by the commissioner at any time upon reasonable notice.

(2) Every insurer shall in addition file with the commissioner all rates that the insurer uses within this state.

History: En. Sec. 21, Ch. 362, L. 1969;
amd. Sec. 1, Ch. 469, L. 1977.

Amendments

The 1977 amendment inserted the subsection (1) designation and added subsection (2).

40-3655. Records and examination. The commissioner shall, at least once every five (5) years, and may as often as may be reasonable and necessary, make or cause to be made, an examination of each licensed rating organization, and he may, as often as may be reasonable and necessary, make or cause to be made an examination of any advisory organization or group, association or other organization of insurers which engages in joint underwriting or joint reinsurance.

In lieu of any such examination, the commissioner may accept the report of an examination made by the insurance supervisory official of another state.

In examining any organization, group or association pursuant to this section, the commissioner shall ascertain whether such organization, group or association, and, in the case of a rating organization, any rate or rating system made or used by it, complies with the requirements and standards of this chapter applicable to it.

History: En. Sec. 22, Ch. 362, L. 1969.

40-3656. Examination of admitted insurers. The commissioner may, at any reasonable time, make or cause to be made an examination of every admitted insurer transacting any class of insurance to which the provisions of this chapter are applicable to ascertain whether such insurer and every rate and rating system used by it for every class of insurance complies with the requirements and standards of this chapter applicable thereto. Such examination shall not be a part of a periodic general examination participated in by representatives of more than one state.

History: En. Sec. 23, Ch. 362, L. 1969.

40-3657. Examination of officers, managers, agents and employees. The officers, managers, agents and employees of any such organization, group, association or insurer may be examined at any time under oath, and shall exhibit all books, records, accounts, documents or agreements governing its method of operation, together with all data, statistics and information of every kind and character collected or considered by such organization, group, association or insurer in the conduct of the operations to which such examination relates.

History: En. Sec. 24, Ch. 362, L. 1969.

40-3658. Payment of cost of examination. The reasonable cost of any examination authorized by this article shall be paid by the organization, group, association or insurer to be examined.

History: En. Sec. 25, Ch. 362, L. 1969.

40-3659. Review of rates. Any person aggrieved by any rate charged, rating plan, rating system or underwriting rule followed or adopted by an insurer or rating organization, may request the insurer or rating organization to review the manner in which the rate, plan, system or rule has been applied with respect to insurance afforded him. Such request may be made by his authorized representative, and shall be written. If the request is not granted within thirty (30) days after it is made, the requester may treat it as rejected. Any person aggrieved by the action of an insurer or rating organization in refusing the review requested, or in failing or refusing to grant all or part of the relief requested, may file a written complaint and request for hearing with the commissioner, specifying the grounds relied upon. If the commissioner has information concerning a similar complaint, he may deny the hearing. If he believes that probable cause for the complaint does not exist or that the complaint is not made in good faith, he shall deny the hearing. Otherwise, and if he finds that the complaint charges a violation of this chapter and that the complainant would be aggrieved if the violation is proven, he shall proceed as provided in section 27 [40-3660].

History: En. Sec. 26, Ch. 362, L. 1969.

40-3660. Noncompliance of rates. If, after examination of an insurer, rating organization, advisory organization, or group, association or other organization of insurers which engages in joint underwriting or joint reinsurance, or upon the basis of other information, or upon sufficient complaint as provided in section 26 [40-3659], the commissioner has good cause to believe that such insurer, organization, group or association, or any rate, rating plan or rating system made or used by any such insurer or rating organization, does not comply with the requirements and standards of this chapter applicable to it, he shall, unless he has good cause to believe such noncompliance is willful, give notice, in writing, to such insurer, organization, group or association stating therein in what manner and to what extent such noncompliance is alleged to exist and specifying therein a reasonable time, not less than ten (10) days thereafter, in which such noncompliance may be corrected. Notices under this section shall be confidential as between the commissioner and the parties unless a hearing is held under section 28 [40-3661].

History: En. Sec. 27, Ch. 362, L. 1969.

40-3661. Hearings. If the commissioner has good cause to believe such noncompliance to be willful, or if within the period prescribed by the commissioner in the notice required by section 27 [40-3660], the insurer, organization, group or association does not make such changes

as may be necessary to correct the noncompliance specified by the commissioner, or establish to the satisfaction of the commissioner that such specified noncompliance does not exist, then the commissioner may hold a public hearing in connection therewith, provided that within a reasonable period of time, which shall be not less than ten (10) days before the date of such hearing, he shall mail written notice specifying the matters to be considered at such hearing to such insurer, organization, group or association. If no notice has been given as provided in section 27 [40-3660], such notice shall state therein in what manner and to what extent noncompliance is alleged to exist. The hearing shall not include any additional subjects not specified in the notices required by section 27 [40-3660] or this section.

History: En. Sec. 28, Ch. 362, L. 1969.

40-3662. Issuance of order—suspension or revocation of certificate of authority or license. If, after a hearing pursuant to section 28 [40-3661], the commissioner finds:

(a) That any rate, rating plan or rating system violates the provisions of this chapter applicable to it, he may issue an order to the insurer or rating organization which has been the subject of the hearing, specifying in what respects such violation exists and stating when, within a reasonable period of time, the further use of such rate or rating system by such insurer or rating organization in contracts of insurance made thereafter shall be prohibited.

(b) That an insurer, rating organization, advisory organization, or a group, association or other organization of insurers which engages in joint underwriting or joint reinsurance, is in violation of the provisions of this chapter applicable to it, other than the provisions dealing with rates, rating plans or rating systems, he may issue an order to such insurer, organization, group or association which has been the subject of the hearing, specifying in what respects such violation exists and requiring compliance within a reasonable time thereafter.

(c) That the violation of any of the provisions of this chapter applicable to it by any insurer or rating organization which has been the subject of hearing was willful, he may suspend or revoke, in whole or in part, the certificate of authority of such insurer or the license of such rating organization with respect to the class of insurance which has been the subject matter of the hearing.

(d) That any rating organization has willfully engaged in any fraudulent or dishonest act or practices, he may suspend or revoke, in whole or in part, the license of such organization, in addition to any other penalty provided in this chapter.

History: En. Sec. 29, Ch. 362, L. 1969.

40-3663. Failure to comply with order—suspension or revocation of license or certificate. In addition to other penalties provided in this code, the commissioner may suspend or revoke, in whole or in part, the license of any rating organization or the certificate of authority of any

insurer with respect to the class or classes of insurance specified in such order which fails to comply within the time limited by such order or any extension thereof which the commissioner may grant, with an order of the commissioner lawfully made by him pursuant to section 29 [40-3662] and effective pursuant to section 31 [40-3664].

History: En. Sec. 30, Ch. 362, L. 1969.

40-3664. Appeals from the commissioner. Any person, insurer or rating organization aggrieved by any order or decision made by the commissioner under this chapter may appeal therefrom to the district court of the county where the aggrieved party may reside, or has his principal place of business in this state, or to the district court of Lewis and Clark county, Montana. The appeal shall be taken within thirty (30) days from the making and filing of the order or decision by filing in the office of the commissioner a notice of the appeal in writing. The commissioner shall, within twenty (20) days after filing of the notice, make and return to the district court a full and complete certified transcript of the finding and order appealed from and of all parts relative thereto on file in his office, including the notice of appeal. Upon filing of the certified transcript, all matters involved therein shall be brought on for trial upon the merits at the next term of the court after the filing of the transcript, unless otherwise ordered by the court. Upon the trial, the findings of fact on which the order is based shall be prima facie evidence of the matters therein stated. During the pendency of the proceedings upon review, the order of the commissioner shall be suspended, but in the event of a final determination against any insurer, any overcharge by the insurer during review shall be refunded to the persons entitled thereto.

History: En. Sec. 31, Ch. 362, L. 1969.

40-3665. Information not to be willfully withheld. (a) No person, insurer or organization shall willfully withhold information from, or knowingly give false or misleading information to, the commissioner or to any rating organization, advisory organization, insurer or group, association or other organization of insurers, which will affect the rates, rating systems or premiums for the classes of insurance to which the provisions of this chapter are applicable.

(b) Any person, insurer, organization, group or association who fails to comply with a final order of the commissioner under this chapter shall be liable to the state in an amount not exceeding fifty dollars (\$50), but if such failure be willful, he or it shall be liable to the state in an amount not exceeding five thousand dollars (\$5,000) for such failure. The commissioner shall collect the amount so payable and may bring an action in the name of the people of the state of Montana to enforce collection. Such penalties may be in addition to any other penalties provided by law.

(c) A willful violation of the provisions of this chapter by any person is a misdemeanor.

History: En. Sec. 32, Ch. 362, L. 1969.

40-3666. Payment of dividends, etc., not prohibited or regulated—plan for payment not rating system. Nothing in this chapter shall be construed to prohibit or regulate the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers. A plan for the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers shall not be deemed a rating plan or system.

History: En. Sec. 33, Ch. 362, L. 1969.

40-3667. Acts, etc., done by authority of chapter not violation of other laws. No act done, action taken or agreement made pursuant to the authority conferred by this chapter shall constitute a violation of or grounds for prosecution or civil proceedings under any other law of this state heretofore or hereafter enacted which does not specifically refer to insurance.

History: En. Sec. 34, Ch. 362, L. 1969.

40-3668. Administration or enforcement of chapter—supplementation or modification. The administration and enforcement of this chapter shall be governed solely by the provisions of this chapter. Except as provided in this chapter, no other law relating to insurance and no other provisions in this code heretofore or hereafter enacted shall apply to or be construed as supplementing or modifying the provisions of this chapter unless such other law or other provision expressly so provides and specifically refers to the sections of this chapter which it intends to supplement or modify.

History: En. Sec. 35, Ch. 362, L. 1969.

40-3669. Recording and reporting of loss and expense experience. (a) The commissioner shall promulgate and may modify reasonable rules and statistical plans, reasonably adapted to each of the rating systems used, and which shall thereafter be used by each insurer in the recording and reporting of its loss and country-wide expense experience, in order that the experience of all insurers may be made available at least annually in such form and detail as may be necessary to aid him in determining whether rates comply with the applicable standards of this act. Such rules and plans may also provide for the recording and reporting of expense experience items which are specially applicable to this state and are not susceptible of determination by a prorating of country-wide expense experience.

(b) In promulgating such rules and plans the commissioner shall give due consideration to the rating systems in use in this state and, in order that such rules and plans may be as uniform as is practicable among the several states to the rules and to the form of the plans used for such rating systems in other states. No insurer shall be required to record or report its loss experience on a classification basis that is inconsistent with the rating system used by it.

(c) The commissioner may designate one or more rating organizations or other agencies to assist him in gathering such experience and making compilations thereof, and such compilations shall be made available, subject to reasonable rules promulgated by the commissioner, to insurers and rating organizations.

History: En. Sec. 36, Ch. 362, L. 1969.

Repealing Clause

Section 37 of Ch. 362, Laws 1969 read "Sections 40-3601 through 40-3633, R. C. M. 1947, are hereby repealed."

CHAPTER 37—THE INSURANCE CONTRACT

Section 40-3729. Assignment of policies.

40-3738. Continuation of coverage for handicapped—individual contracts.

40-3739. Continuation of coverage for handicapped—group contracts.

40-3740. Equal application notwithstanding contrary exemption or law.

40-3713. Representations in applications.

Misstatements Material to Acceptance

Where application for automobile insurance contained nonfraudulent misstatements as to driving history on one insured which were material to acceptance of risk and hazard assumed by plaintiff, and insurer's agent received both letter from insurer rejecting application and notice of accident involving automobile to be insured on same day, insurer was not liable. *American Indemnity Co. v. Elspuru*, 302 F Supp 878.

the best of my knowledge and belief I am now in good health." *Lentz v. Prudential Insurance Co. of America*, — M —, 520 P 2d 769.

Unintentional Misrepresentation

Deceased who had been continually reassured by his doctor that his health was improving and who was himself encouraged as to his condition did not misrepresent his health so as to preclude recovery on credit life policy by declaring "to

Waiver of Misrepresentation

Motorist injured by negligence of insured was entitled to recover under insured's policy, even though insurance company was entitled to rescind policy for violation of this statute since insurance policy was effective until rescinded and since subsequent to discovering insured's fraud, insurance company acted affirmatively in accepting premium payments and paying other claims arising out of same accident all of which constituted implied waiver of right to rescind. *McLane v. Farmers Ins. Exchange*, 150 M 116, 432 P 2d 98.

40-3714. Filing, approval of forms.

Effect of Approval

Approval by commissioner of form in which an illegal provision appeared did

not operate to validate the provision. *McCarter v. Glacier General Assurance Co.*, — M —, 546 P 2d 249.

40-3725. Construction of policies.

Construction against Insurer

A policy of insurance must be liberally construed in favor of the insured, and strictly construed against the insurer. *Insurance Co. of North America v. Butte Aero Sales & Service*, 243 F Supp 276.

Endorsement on insurance policy limiting aircraft insurance to named person and anyone else having certain number of hours of flying time and proper certification was construed against the insurer to mean that the named insured was at all times covered while others who flew the craft had to be certified also in order to be covered by the policy. *Insurance Co. of North America v. Butte Aero Sales &*

Service, 243 F Supp 276, distinguished in 429 F 2d 896, 898.

Crop Insurance

Crop-hail insurance policy, which required information pertaining to acreage of crop prior to issuance, should be strictly construed against the insurer in determining that value of crop damage was based on percentage of area destroyed rather than on estimated crop value, since policy form was provided by the company. *Billmeyer v. Farmers Union Property & Casualty Co.*, 146 M 38, 404 P 2d 322, 20 ALR 3d 916.

Where the basis for recovery under a crop-hail insurance policy was on the acreage insured, stipulation that amount payable should not exceed the "actual loss or damage," read in light of the entire policy, pertained to loss or damage

representing the percentage of injury to the crop, and not the value of the crop. *Billmayer v. Farmers Union Property & Casualty Co.*, 146 M 38, 404 P 2d 322, 20 ALR 3d 916.

40-3729. Assignment of policies. A policy, or group certificate issued thereunder, may be assignable or not assignable, as provided by its terms. Subject to its terms relating to the assignability, any life or disability policy, or group certificate under either, whether heretofore or hereafter issued, under the terms of which the beneficiary may be changed upon the sole request of the insured or owner, may be assigned either by pledge or transfer of title, by an assignment executed by the insured or owner, alone and delivered to the insurer, whether or not the pledgee or assignee is the insurer. An assignment valid hereunder may transfer to the assignee all the rights, privileges, and incidents of ownership of the assignor in the policy or group certificate, including, but not limited to the rights to designate beneficiaries and of a group certificate holder to have an individual policy issued in accordance with sections 40-3918 and 40-3919. Any such assignment shall entitle the insurer to deal with the assignee as the owner or pledgee of the policy in accordance with the terms of the assignment, until the insurer has received at its home office written notice of termination of the assignment or pledge, or written notice by or on behalf of some other person claiming some interest in the policy in conflict with the assignment; provided, however, that the insurer shall not be prejudiced by any payment made or action taken inconsistent with the terms of any assignment before the insurer has received and had reasonable time to act on written notice of such assignment. This section acknowledges, declares and codifies the existing right of assignment of interests under insurance policies. An assignment otherwise valid shall not be invalid because it was made prior to the effective date of this section.

History: En. Sec. 286, Ch. 286, L. 1959; amd. Sec. 1, Ch. 167, L. 1971.

Amendments

The 1971 amendment inserted references to group certificates in the first and

second sentences; inserted "or owner" following "insured" in two places in the second sentence; inserted the third sentence; added the proviso to the fourth sentence; and added the final two sentences.

40-3733. Claims administration not waiver.

Waiver of Defects in Proof of Loss

Insurer's receipt and retention for 60 days of statement of loss due to fire constituted waiver of defense that insured

failed to provide adequate proof of loss. *Staggers v. United States Fidelity & Guaranty Co.*, 159 M 254, 496 P 2d 1161.

40-3738. Continuation of coverage for handicapped—individual contracts. An individual hospital or medical expense insurance policy, or hospital or medical service plan contract, delivered or issued for delivery in this state more than one hundred twenty (120) days after the effective date of this act, which provides that coverage of a dependent child shall terminate upon attainment of the limiting age for dependent children specified in the policy or contract shall also provide in substance that attainment of such limiting age shall not operate to terminate the cover-

age of such child while the child is and continues to be both (a) incapable of self-sustaining employment by reason of mental retardation or physical handicap and (b) chiefly dependent upon the policyholder or subscriber for support and maintenance, provided proof of such incapacity and dependency is furnished to the insurer or hospital or medical service plan corporation by the policyholder or subscriber within thirty-one (31) days of the child's attainment of the limiting age and subsequently as may be required by the insurer or corporation but not more frequently than annually after the two-year period following the child's attainment of the limiting age.

History: En. 40-3738 by Sec. 1, Ch. 298, L. 1971.

Title of Act

An act to provide for the continuation of coverage under individual and group

health insurance and hospital and medical service plan contracts for mentally retarded or physically handicapped dependent children; amending chapter 37, Title 40, R. C. M. 1947.

40-3739. Continuation of coverage for handicapped—group contracts. A group hospital or medical expense insurance policy, or hospital or medical service plan contract, delivered or issued for delivery in this state more than one hundred twenty (120) days after the effective date of this act, which provides that coverage of a dependent child of an employee or other member of the covered group shall terminate upon attainment of the limiting age for dependent children specified in the policy or contract shall also provide in substance that attainment of such limiting age shall not operate to terminate the coverage of such child while the child is and continues to be both (a) incapable of self-sustaining employment by reason of mental retardation or physical handicap and (b) chiefly dependent upon the employee or member for support and maintenance, provided proof of such incapacity and dependency is furnished to the insurer or hospital or medical service plan corporation, by the employee or member within thirty-one (31) days of the child's attainment of the limiting age and subsequently as may be required by the insurer or corporation, but not more frequently than annually after the two-year period following the child's attainment of the limiting age.

History: En. 40-3739 by Sec. 1, Ch. 298, L. 1971.

40-3740. Equal application notwithstanding contrary exemption or law. The provisions of this act shall have equal application to hospital or medical expense insurance policies, and hospital and medical service plan contracts, any other exemption or law to the contrary notwithstanding.

History: En. Sec. 2, Ch. 298, L. 1971.

CHAPTER 38—LIFE INSURANCE AND ANNUITIES

Section 40-3802. "Industrial life insurance" defined.

40-3831. Standard nonforfeiture law—life insurance.

40-3802. "Industrial life insurance" defined. For the purposes of this code "industrial life insurance" is that form of life insurance written

under policies of face amount of two thousand dollars (\$2,000) or less bearing the words "industrial policy" imprinted on the face thereof as part of the descriptive matter, and under which premiums are payable monthly or more often.

History: En. Sec. 296, Ch. 286, L. 1959;
amd. Sec. 1, Ch. 30, L. 1969.

Amendments

The 1969 amendment raised the limit for policies from \$1,000 to \$2,000.

40-3831. Standard nonforfeiture law—life insurance. (1) to (3).
* * * [Same as parent volume.]

(4) Cash surrender value—life: Any cash surrender value available under the policy in the event of default in the premium payment due on any policy anniversary, whether or not required by subsection (2) of this section, shall be an amount not less than the excess, if any, of the present value on such anniversary of the future guaranteed benefits which would have been provided for by the policy, including any existing paid-up additions if there had been no default, over the sum of:

(a) The then present value of the adjusted premiums as defined in subsections (6), (7), (7-a), (8), (8-a) and (8-b) of this section, corresponding to premiums which would have fallen due on and after such anniversary, and

(b). * * * [Same as parent volume.]

(5) to (7). * * * [Same as parent volume.]

(7-a) The adjusted premiums for any policy providing term insurance benefits by rider or supplemental policy provision shall be equal to (i) the adjusted premiums for an otherwise similar policy issued at the same age without such term insurance benefits, increased during the period for which premiums for such term insurance benefits are payable, by (ii) the adjusted premiums for such term insurance, the foregoing items (i) and (ii) being calculated separately and as specified in subsections (6) and (7) except that, for the purposes of (b), (c), and (d) of subsection (6), the amount of insurance or equivalent uniform amount of insurance used in the calculation of the adjusted premiums referred to in (ii) shall be equal to the excess of the corresponding amount determined for the entire policy over the amount used in the calculation of the adjusted premiums in (i).

(8) Except as otherwise provided in subsections (8-a) and (8-b), all adjusted premiums and present values referred to in this section shall for all policies of ordinary insurance be calculated on the basis of the commissioner's 1941 standard ordinary mortality table, provided that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated, at the option of the insurer with approval of the commissioner, according to an age younger than the actual age of the insured and such calculations for all policies of industrial insurance shall be made on the basis of the 1941 standard industrial mortality table. All calculations shall be made on the basis of the rate of interest, not exceeding three and one-half per cent (3½%) per annum, specified in the policy for calculating cash surrender values

and paid-up nonforfeiture benefits, provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than one hundred thirty per cent (130%) of the rates of mortality according to such applicable table, provided further that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the insurer and approved by the commissioner.

(8-a) In the case of ordinary policies issued on or after the operative date of this subsection (8-a) as defined herein, all adjusted premiums and present values referred to in this section shall be calculated on the basis of the commissioners 1958 standard ordinary mortality table and the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits, provided that such rate of interest shall not exceed three and one-half per cent ($3\frac{1}{2}\%$) per annum except that a rate of interest not exceeding four per cent (4%) per annum may be used for policies issued on or after the effective date of this amendatory act of 1973 and prior to January 1, 1986, and provided that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than three years younger than the actual age of the insured. Provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the commissioner's 1958 extended term insurance table. Provided, further, that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner.

After the effective date of this subsection (8-a), any insurer may file with the commissioner a written notice of its election to comply with the provisions of this subsection after a specified date before January first, nineteen hundred and sixty-six. After the filing of such notice, then upon such specified date (which shall be the operative date of this subsection for such insurer), this subsection shall become operative with respect to the ordinary policies thereafter issued by such insurer. If an insurer makes no such election, the operative date of this subsection for such insurer shall be January first, nineteen hundred and sixty-six.

(8-b) In the case of industrial policies issued on or after the operative date of this subsection (8-b) as defined herein, all adjusted premiums and present values referred to in this section shall be calculated on the basis of commissioners 1961 standard industrial mortality table and the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits provided that such rate of interest shall not exceed three and one-half per cent ($3\frac{1}{2}\%$) per annum except that a rate of interest not exceeding four per cent (4%) per annum may be used for policies issued on or after the effective date of this amendatory act of

1973 and prior to January 1, 1986. Provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the commissioners 1961 industrial extended term insurance table. Provided, further, that for insurance issued on a substandard basis the calculations of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner.

After the effective date of this subsection (8-b), any insurer may file with the commissioner a written notice of its election to comply with the provisions of this subsection after a specified date before January first, nineteen hundred and sixty-eight. After the filing of such notice, then upon such specified date (which shall be the operative date of this subsection for such insurer), this subsection shall become operative with respect to the industrial policies thereafter issued by such insurer. If an insurer makes no such election, the operative date of this subsection for such insurer shall be January first, nineteen hundred and sixty-eight.

(9) Calculation of values—life: Any cash surrender value and any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment due at any time other than on the policy anniversary shall be calculated with allowance for the lapse of time and the payment of fractional premiums beyond the last preceding policy anniversary. All values referred to in subsections (4), (5), (6), (7), (7-a), (8), (8-a) and (8-b) of this section may be calculated upon the assumption that any death benefit is payable at the end of the policy year of death. The net value of any paid-up additions, other than paid-up term additions, shall be not less than the dividends used to provide such additions. Notwithstanding the provisions of subsection (4) of this section, additional benefits payable:

(a) In the event of death or dismemberment by accident or accidental means,

(b) In the event of total and permanent disability,

(c) As reversionary annuity or deferred reversionary annuity benefits,

(d) As term insurance benefits provided by a rider or supplemental policy provision to which, if issued as a separate policy, this section would not apply,

(e) As term insurance on the life of a child or on the lives of children provided in a policy on the life of a parent of the child, if such term insurance expires before the child's age is twenty-six, is uniform in amount after the child's age is one, and has not become paid up by reason of the death of a parent of the child, and

(f) As other policy benefits additional to life insurance and endowment benefits, and premiums for all such additional benefits,

Shall be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by this section, and no such additional benefits shall be required to be included in any paid-up nonforfeiture benefits.

(10) Exceptions. This section shall not apply to any reinsurance, group insurance, pure endowment, annuity or reversionary annuity contract, nor to any term policy of uniform amount, or renewal thereof, of fifteen (15) years or less expiring before age 66 for which uniform premiums are payable during the entire term of the policy, nor to any term policy of decreasing amount on which each adjusted premium, calculated as specified in subsections (6), (7), (7-a), (8), (8-a) and (8-b) of this section is less than the adjusted premiums so calculated on a policy issued at the same age and for the same initial amount of insurance for a term defined as follows: For ages at issue fifty (50) and under, the term shall be fifteen (15) years; thereafter, the term shall decrease one (1) year for each year of age beyond fifty (50).

(11). * * * [Same as parent volume.]

History: En. Sec. 325, Ch. 286, L. 1959; amd. Sec. 1, Ch. 65, L. 1961; amd. Sec. 1, Ch. 42, L. 1965; amd. Sec. 2, Ch. 341, L. 1973.

date of this amendatory act of 1973 and prior to January 1, 1986" in the first sentences of subsections (8-a) and (8-b); and made minor changes in phraseology.

Amendments

Effective Dates

The 1965 amendment inserted subsection (8-b); inserted references to subsection (8-b) in subsections (4) (a), (8), (9), and (10); and made minor changes in punctuation in subsections (7-a) and (8).

Section 2 of Ch. 42, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 22, 1965.

The 1973 amendment inserted "except that a rate of interest not exceeding four per cent (4%) per annum may be used for policies issued on or after the effective

Section 3 of Ch. 341, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 17, 1973.

CHAPTER 39—GROUP LIFE INSURANCE

- Section 40-3905.1. State employee groups.
 40-3906. Debtor groups.
 40-3909. Dependents' coverage.

40-3905.1. State employee groups. All departments, bureaus, boards, commissions and agencies of the state of Montana are hereby authorized upon approval by a two-thirds ($\frac{2}{3}$) vote of the officers and employees of such departments, bureaus, boards, commissions and agencies to enter into group hospitalization, medical, health, accident and/or group life insurance contracts or plans for the benefit of their officers, employees and their dependents. The premiums required from time to time to maintain such insurance in force shall be paid by the insured officers and employees, and the auditor shall deduct said premiums from the salary or wages of each officer or employee who elects to become insured, on the officer or employee's written order, and issue his warrant therefor to the insurer. For the purpose of this act, the plans of health service corporations for defraying or assuming the cost of professional services of licentiates in the field of health, or the services of hospitals, clinics or sanitariums, or both professional and hospital services, shall be construed as group insurance, and the dues payable under such plans shall be construed as premiums therefor.

History: En. Sec. 1, Ch. 248, L. 1963.

Effective Date

Title of Act

Section 2 of Ch. 248, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 11, 1963.

An act relating to group life and health insurance for state officers and employees and providing for payroll deductions.

40-3906. Debtor groups. The lives of a group of individuals may be insured under a policy issued to a creditor, who shall be deemed the policyholder, to insure the debtors of the creditor, subject to the following requirements:

(1) to (3). * * * [Same as parent volume.]

(4) The amount of insurance on the life of any debtor shall at no time exceed the amount owed by him to the creditor. Where the indebtedness is repayable in one sum to the creditor, the insurance on the life of any debtor shall in no instance be in effect for a period in excess of five years, except that such insurance may be continued for an additional period not exceeding six months in the case of default, extension or recasting of the loan.

(5). * * * [Same as parent volume.]

History: En. Sec. 333, Ch. 286, L. 1959; amd. Sec. 1, Ch. 132, L. 1965.

years" for "eighteen months" in the second sentence of subsection (4).

Amendment

Repealing Clause

The 1965 amendment deleted "or ten thousand dollars (\$10,000), whichever is less" at the end of the first sentence of subsection (4); and substituted "five

Section 2 of Ch. 132, Laws 1965 repealed all acts and parts of acts in conflict therewith.

40-3908. Repealed.

Repeal

group life insurance issued, was repealed by Sec. 1, Ch. 104, Laws of 1974.

Section 40-3908 (Sec. 335, Ch. 286, L. 1959), relating to limits on amount of

40-3909. Dependents' coverage. Any group life policy issued under section 40-3902 (employee groups), or 40-3903 (labor union groups) or 40-3904 (trustee groups) may be extended to insure the employees or members against loss due to the death of their spouses and minor children, or any class or classes thereof, subject to the following requirements:

(1) * * * [Same as parent volume.]

(2) The amounts of insurance must be based upon some plan precluding individual selection either by the employees or members or by the policyholder, employer or union.

(3) and (4) * * * [Same as parent volume.]

History: En. Sec. 336, Ch. 286, L. 1959; amd. Sec. 1, Ch. 215, L. 1977.

amounts of insurance "shall not exceed, with respect to any spouse or child, the amount shown in the following schedule" and deleted the schedule. For prior version, see parent volume.

Amendments

The 1977 amendment deleted from the end of subsection (2) a provision that

CHAPTER 40—DISABILITY INSURANCE POLICIES

- Section 40-4002. Scope, format of policy.
40-4002.1. Coverage of newborn under family policy.
40-4008. Notice of claim.
40-4035. Health insurance coverage of services of state institutions.
40-4036. Locus of purchase.
40-4037. Exclusion of state institution services void.
40-4038. Rate of payment for state institution services.

40-4002. Scope, format of policy. No policy of disability insurance shall be delivered or issued for delivery to any person in this state unless it otherwise complies with this code, and complies with the following:

(1) to (3) *** [Same as parent volume.]

(4) (a) No policy or certificate of insurance, which in addition to covering the insured, also covers members of the insured's family, may be issued or amended in this state if it contains any disclaimer, waiver, or other limitation of coverage relative to the accident and sickness coverage or insurability of newborn infants of an insured from and after the moment of birth;

(b) The coverage for newborn infants shall be the same as provided by the policy for other covered persons; provided, however, that for newborn infants there shall be no waiting or elimination periods. A deductible or reduction in benefits applicable to the coverage for newborn infants is not permissible unless it conforms and is consistent with the deductible or reduction in benefits applicable to all other covered persons;

(5) The style, arrangement and over-all appearance of the policy shall give no undue prominence to any portion of the text, and every printed portion of the text of the policy and of any endorsements or attached papers shall be plainly printed in light-faced type of a style in general use, the size of which shall be uniform and not less than ten (10) point with a lower case unspaced alphabet length not less than one hundred and twenty (120) point (the "text" shall include all printed matter except the name and address of the insurer, name or title of the policy, the brief description, if any, and captions and subcaptions);

(6) The exceptions and reductions of indemnity shall be set forth in the policy and, other than those contained in sections 40-4004 to 40-4026, inclusive, of this chapter, shall be printed, at the insurer's option, either included with the benefit provision to which they apply, or under an appropriate caption such as "Exceptions," or "Exceptions and Reductions," except that if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of such exception or reduction shall be included with the benefit provision to which it applies;

(7) Each such form, including riders and endorsements, shall be identified by a form number in the lower left-hand corner of the first page thereof;

(8) The policy shall contain no provision purporting to make any portion of the charter, rules, constitution or bylaws of the insurer a part of the policy unless such portion is set forth in full in the policy, except in the case of the incorporation of, or reference to, a statement of rates or classification of risks, or short-rate table filed with the commissioner.

History: En. Sec. 352, Ch. 286, L. 1959; amd. Sec. 1, Ch. 74, L. 1973; amd. Sec. 1, Ch. 83, L. 1974.

Amendments

The 1973 amendment inserted a new subsection (4); and renumbered for-

mer subsections (4), (5), (6) and (7) as subsections (5), (6), (7) and (8), respectively.

The 1974 amendment redesignated the former subdivision (4) as subdivision (4) (a) and added subdivision (4)(b).

40-4002.1. Coverage of newborn under family policy. (a) Each policy of disability insurance or certificate issued thereunder, which in addition to covering the insured, also covers members of the insured's family shall contain a provision granting immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of any insured.

(b) The coverage for newborn infants shall be the same as provided by the policy for the other covered persons; provided, however, that for newborn infants there shall be no waiting or elimination periods. A deductible or reduction in benefits applicable to the coverage for newborn infants is not permissible unless it conforms and is consistent with the deductible or reduction in benefits applicable to all other covered persons.

History: En. 40-4002.1 by Sec. 2, Ch. 74, L. 1973; amd. Sec. 2, Ch. 83, L. 1974.

Title of Act

An act providing that disability insurance policies and plans covering members of the insured's family as well as the insured shall grant immediate accident and sickness coverage, from and after the mo-

ment of birth, to each newborn infant of any insured; and amending sections 40-4002, 40-4101 and 40-4102.

Amendments

The 1974 amendment designated the former language of this section as subdivision (a); and added subdivision (b).

40-4008. Notice of claim. There shall be a provision as follows:

"Notice of Claim: Written notice of claim must be given to the insurer within six (6) months after the occurrence or commencement of any loss covered by the policy, or as soon thereafter as is reasonably possible. Notice given by or on behalf of the insured or the beneficiary to the insurer at _____ (insert the location of such office as the insurer may designate for the purpose), or to any authorized agent of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer."

In a policy providing a loss-of-time benefit which may be payable for at least two (2) years, an insurer may at its option insert the following between the first and second sentences of the above provision:

"Subject to the qualifications set forth below, if the insured suffers loss of time on account of disability for which indemnity may be payable for at least two years, he shall, at least once in every six (6) months after having given notice of the claim, give to the insurer notice of continuance of the disability, except in the event of legal incapacity. The period of six (6) months following any filing of proof by the insured or any payment by the insurer on account of such claim or any denial of liability in whole or in part by the insurer shall be excluded in applying this provision. Delay in the giving of such notice shall not impair the insured's right to any indemnity which would otherwise have accrued during the period

of six (6) months preceding the date on which such notice is actually given."

History: En. Sec. 358, Ch. 286, L. 1959; amd. Sec. 1, Ch. 189, L. 1974.

Amendments

The 1974 amendment substituted "within six (6) months" for "within twenty (20) days" relative to notice of claim.

40-4011. Time of payment of claims.

Criminal Penalty

Separate penalty provided in section 40-2617 is applicable to violation of this section where insurer's acts or omissions in avoiding prompt payment are oppressive, malicious, or fraudulent. State ex rel. Larson v. District Court, 149 M 131, 423 P 2d 598, distinguished in 157 M 40, 44, 482 P 2d 567.

Exemplary Damages

Insured was entitled to actual damages for default on policy requiring insurer to pay car installments upon insured's disability as well as to exemplary damages

for default as being in violation of statute requiring prompt payment of claim where insurer's acts or omissions in avoiding prompt payment are oppressive, malicious, or fraudulent. State ex rel. Larson v. District Court, 149 M 131, 423 P 2d 598, distinguished in 157 M 40, 44, 482 P 2d 567.

If insurance company stalled payment on claim deliberately, and ultimately failed to pay, breach of insurance contract was also violation of insurance code, and punitive damages could be awarded. Helton v. Reserve Life Ins. Co., 399 F Supp 1322.

40-4034. Violations.

Prompt Payment of Claims

Separate penalty provided in section 40-2617 is applicable to violation of section 40-4011 where insurer's acts or omissions in avoiding prompt payment are oppres-

sive, malicious, or fraudulent. State ex rel. Larson v. District Court, 149 M 131, 423 P 2d 598, distinguished in 157 M 40, 44, 482 P 2d 567.

40-4035. Health insurance coverage of services of state institutions. From and after the effective date of this act, it shall be unlawful for any insurance company or health service corporation issuing disability insurance policies in Montana to exclude from coverage in a disability insurance policy services rendered the insured while a resident in a Montana state institution; provided such services to such insured would be covered by such disability insurance policy if rendered to him outside such Montana state institution.

History: En. Sec. 1, Ch. 50, L. 1973.

Title of Act

An act prohibiting insurance companies issuing disability insurance policies in Montana from excluding therefrom coverage for services rendered an insured while a resident of a Montana state insti-

tution, if such services would have been covered if rendered to an insured outside such institution; defining "issued in Montana"; providing that such exclusion, if appearing in a disability insurance policy issued in Montana after the effective date of this act, is void; providing for rate of payment; and providing an effective date.

40-4036. Locus of purchase. A disability insurance policy shall be deemed to be "issued in Montana" if the insured purchasing such disability insurance policy is, at the time of such purchase, residing in the state of Montana.

History: En. Sec. 2, Ch. 50, L. 1973.

40-4037. Exclusion of state institution services void. If the exclusion, prohibited by this act, should appear in a disability insurance policy issued in Montana after the effective date of this act, such provision shall be deemed void and such disability insurance policy will be deemed to cover

services rendered the insured in a Montana state institution if such services would have been covered if rendered to an insured outside of a Montana state institution.

History: En. Sec. 3, Ch. 50, L. 1973.

40-4038. Rate of payment for state institution services. Payment for services rendered in a Montana state institution shall be to the same extent and at the same rates, according to the provisions of such disability policy, which would be paid for such services if rendered outside a Montana state institution.

History: En. Sec. 4, Ch. 50, L. 1973.

Effective Date

Section 5 of Ch. 50, Laws 1973 provided

the act should be in effect from and after its passage and approval. Approved February 14, 1973.

CHAPTER 41—GROUP AND BLANKET DISABILITY INSURANCE

Section 40-4101. "Group disability insurance" defined—eligible groups.

40-4102. Required provisions of group policies.

40-4108. Policies to provide for freedom of choice of practitioners.

40-4109. Scope of professional practice not enlarged—hospitals.

40-4101. "Group disability insurance" defined—eligible groups. Group disability insurance is hereby declared to be that form of disability insurance covering groups of persons as defined below, with or without one or more members of their families or one or more of their dependents, or covering one or more members of the families or one or more dependents of such groups of persons, and issued upon the following basis:

(1) to (6). * * * [Same as parent volume.]

(7) (a) No group disability policy or certificate of insurance, which, in addition to covering persons in the insured group, also covers members of such person's family, may be issued or amended in this state if it contains any disclaimer, waiver, or other limitation of coverage relative to the accident and sickness coverage or insurability of newborn infants of persons in the insured group from and after the moment of birth.

(b) The coverage for newborn infants shall be the same as provided by the policy for other covered persons; provided, however, that for newborn infants there shall be no waiting or elimination periods. A deductible or reduction in benefits applicable to the coverage for newborn infants is not permissible unless it conforms and is consistent with the deductible or reduction in benefits applicable to all other covered persons.

History: En. Sec. 385, Ch. 286, L. 1959; amd. Sec. 3, Ch. 74, L. 1973; amd. Sec. 3, Ch. 83, L. 1974.

The 1974 amendment designated the former language of subdivision (7) as subdivision (7)(a) and added subdivision (7)(b).

Amendments

The 1973 amendment added subsection (7).

40-4102. Required provisions of group policies. Each such group disability insurance policy shall contain in substance the following provisions:

(1) to (3). * * * [Same as parent volume.]

If the policy or certificate issued thereunder, in addition to covering persons in the insured group, also covers members of such person's family,

it shall contain an additional provision granting immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of any person in the insured group.

The coverage for newborn infants shall be the same as provided by the policy for other covered persons; provided, however, that for newborn infants there shall be no waiting or elimination periods. A deductible or reduction in benefits applicable to the coverage for newborn infants is not permissible unless it conforms and is consistent with the deductible or reduction in benefits applicable to all other covered persons.

History: En. Sec. 386, Ch. 286, L. 1959; amd. Sec. 4, Ch. 74, L. 1973; amd. Sec. 4, Ch. 83, L. 1974.

Amendments

The 1973 amendment added the paragraph following subsection (3).

The 1974 amendment added the final paragraph.

Effective Date

Section 5 of Ch. 83, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 4, 1974.

Change in Coverage

Where group medical insurance policy was amended to exclude treatments "experimental in nature or which do not constitute accepted medical practice," and no notice of the change was given to the insureds, they were entitled to reimbursement for expenses incurred during the coverage period of the policy as modified as a result of experimental and unorthodox treatments administered to their Mongoloid daughter, when these expenses arose out of the continuation of a course of treatment begun prior to the amendment. *Fassio v. Montana Physicians' Service*, — M —, 553 P 2d 998.

40-4108. Policies to provide for freedom of choice of practitioners. All policies of disability insurance, including individual, group and blanket policies, and all policies insuring the payment of compensation under the Workmen's Compensation Act shall provide the insured shall have full freedom of choice in the selection of any duly licensed physician, osteopath, chiropractor, optometrist, chiropodist or clinical psychologist for treatment of any illness or injury within the scope and limitations of his practice. Whenever such policies insure against the expense of drugs, the insured shall have full freedom of choice in the selection of any duly licensed and registered pharmacist.

History: En. Sec. 1, Ch. 172, L. 1967; amd. Sec. 1, Ch. 402, L. 1971.

Title of Act

An act requiring disability insurance and workmen's compensation policies to provide the insured shall have full freedom of choice in the selection of any duly licensed physician, osteopath, chiroprac-

tor, optometrist or chiropodist for treatment of illness or injury; providing a like freedom of choice in the selection of pharmacists; providing an effective date; and containing a repealing clause.

Amendments

The 1971 amendment inserted "or clinical psychologist."

40-4109. Scope of professional practice not enlarged—hospitals. Nothing in this act shall be construed as enlarging the scope and limitations of practice of any of the licensed professions enumerated in section 1 [40-4108]; nor shall this act be construed as amending, altering, or repealing any statutes relating to the licensing or use of hospitals.

History: En. Sec. 2, Ch. 172, L. 1967.

Effective Date

Section 3 of Ch. 172, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 27, 1967.

Repealing Clause

Section 4 of Ch. 172, Laws 1967 repealed all acts and parts of acts in conflict therewith.

CHAPTER 42—CREDIT LIFE AND DISABILITY INSURANCE

Section 40-4203. Scope of chapter.

40-4206. Amount of credit life insurance and credit disability insurance.

40-4211. Premiums and refunds.

40-4203. Scope of chapter. All life insurance and all disability insurance sold in connection with loans or other credit transactions shall be subject to the provisions of this chapter except such insurance sold in connection with a loan or other credit transaction of more than ten (10) years' duration.

History: En. Sec. 394, Ch. 286, L. 1959; amd. Sec. 1, Ch. 31, L. 1969; amd. Sec. 1, Ch. 323, L. 1974.

period of exempt transactions from five years to ten years.

Chapter 323, Laws of 1974 purported to amend this section but made no change in the text.

Amendments

The 1969 amendment increased the time

40-4206. Amount of credit life insurance and credit disability insurance. (1) Credit life insurance: The amount of credit life insurance shall be equal to the indebtedness, provided that the original indebtedness does not exceed the sum of fifteen thousand dollars (\$15,000). If the original indebtedness exceeds the sum of fifteen thousand dollars (\$15,000), the amount of credit life insurance shall not exceed the indebtedness. Where indebtedness repayable in substantially equal installments is secured by an individual policy of credit life insurance the amount of insurance shall not exceed the approximate unpaid indebtedness on the date of death and, where secured by a group policy of credit life insurance shall not exceed the exact amount of unpaid indebtedness on such date. Except, that agricultural loans not exceeding one year may be written up to the amount of the loan commitment on a nondecreasing or level term plan.

(2) Credit disability insurance: The amount of periodic indemnity payable by credit disability insurance in the event of disability, as defined in the policy, shall be equal to the aggregate of the periodic scheduled unpaid installments of indebtedness and shall not exceed the original indebtedness divided by the number of periodic installments, provided that the original indebtedness does not exceed the sum of fifteen thousand dollars (\$15,000). If the original indebtedness exceeds the sum of fifteen thousand dollars (\$15,000), the amount of periodic indemnity payable by credit disability insurance in the event of disability, as defined in the policy, shall not exceed the aggregate of the periodic scheduled unpaid installments of indebtedness and shall not exceed the original indebtedness divided by the number of periodic installments.

History: En. Sec. 397, Ch. 286, L. 1959; amd. Sec. 2, Ch. 323, L. 1974.

serted the second sentence in subsection (1); substituted "shall be equal to the aggregate" for "shall not exceed the aggregate" in the first sentence of subsection (2); and added the proviso to the first sentence and added the second sentence in subsection (2).

Amendments

The 1974 amendment substituted "shall be equal to" for "shall not exceed" in the first sentence of subsection (1); added the proviso to the first sentence and in-

40-4211. Premiums and refunds. (1) to (3). * * * [Same as parent volume.]

(4) The amount charged to a debtor for any credit life or credit disability insurance shall not exceed the premiums charged by the insurer, as computed at the time the charge to the debtor is determined.

History: En. Sec. 402, Ch. 286, L. 1959;
amd. Sec. 1, Ch. 113, L. 1967.

Amendments

The 1967 amendment added subsection (4) to this section.

CHAPTER 43—PROPERTY INSURANCE CONTRACTS

Section 40-4303. Personal property—when loss computation to be based on specific valuation.

40-4301. Measure of the indemnity.

References

Billmayer v. Farmers Union Property & Casualty Co., 146 M 38, 404 P 2d 322.

40-4302. Valued policy law.

Future Improvements

When both parties to a fire insurance policy intend that policy cover property plus added value of work on building to be done subsequently, the policy is "open" or "unvalued," not "valued." Century Corp. v. Phoenix of Hartford, 157 M 16, 482 P 2d 1020.

Improvements on Real Property

Mobile home that rested on permanent foundation with its wheels removed, had two additional rooms bolted to it and was connected with sewer line was an "improvement on real property" as used in this section. Meccage v. Spartan Ins. Co., 156 M 135, 477 P 2d 115.

A trailer house set up for occupancy and connected to a cesspool, a light plant and oil and propane tanks, was an improvement on real property within the meaning of this section. Staggers v. United States Fidelity & Guaranty Co., 159 M 254, 496 P 2d 1161.

Partial Payment

Where valued policy fixed valuation of mobile home at \$3,000, insured who signed proof of loss calling for payment of \$1,500 by the insurer and subsequently accepted check in that amount was not barred from claiming additional \$1,500 since claim was a liquidated demand that was not settled by partial payment. Meccage v. Spartan Ins. Co., 156 M 135, 477 P 2d 115.

Total Loss

Mobile home was wholly destroyed under this section even though some articles were salvaged and frame could be used as farm or ranch trailer, since mobile home's identity and specific character were lost. Meccage v. Spartan Ins. Co., 156 M 135, 477 P 2d 115.

References

Billmayer v. Farmers Union Property & Casualty Co., 146 M 38, 404 P 2d 322.

40-4303. Personal property—when loss computation to be based on specific valuation. This section applies to policies, except motor vehicle insurance policies, which insure specific listed items of personal property against any loss or damage. If the insurer places specific valuations upon particular items of covered property and bases the premium charge on these valuations, then he shall compute any loss or total damage to the property, when covered, at the stated valuation with no deductions or offsets. An insurer who wishes to vary this requirement and use a different method for computation of loss, the policy and any application for such a policy shall set forth in type of prominent size the actual method of loss computation to be employed.

History: En. 40-4303 by Sec. 1, Ch. 96, L. 1974.

erty losses to be computed at the valuations stated in the policy when such valuations affect the premium.

Title of Act

An act requiring insured personal prop-

CHAPTER 44—CASUALTY INSURANCE CONTRACTS

- Section 40-4401. Waiver of defense of immunity required.
- 40-4402. Immunity defense prohibited when liability insured—reduction of award to policy limits.
- 40-4403. Motor vehicle liability policies to include uninsured motorist coverage—rejection of coverage by insured.
- 40-4404. Reimbursement for total loss of motor vehicle based on actual replacement value.
- 40-4405. Notice required for cancellation of auto liability insurance.
- 40-4406. Notice to insured of ground for cancellation—commissioner to ensure compliance.
- 40-4407. Reasons for cancellation.
- 40-4408. Notice of cancellation to be mailed 30 days in advance—exception—statement that insurer will specify reason upon request.
- 40-4409. Advance notice required for nonrenewal—exceptions—exemptions.
- 40-4410. Retention and proof of notice.
- 40-4411. Penalty for violation.
- 40-4412. No liability for statements in connection with cancellation or nonrenewal.
- 40-4413. Cancellation or increase of premium rates of professional liability insurance by reason of unfounded claims prohibited.
- 40-4414. Cancellation or increase of premium rates of professional liability insurance—60 days' written notice required.
- 40-4415. Written notice required for cancellation or nonrenewal of insurance policies on homes.
- 40-4416. Penalty for cancellation or nonrenewal of insurance policies on homes without required notice.

40-4401. Waiver of defense of immunity required. All contracts or policies of casualty insurance covering state-owned properties or state risks must contain an agreement on the part of the insurer waiving all right to raise the defense of immunity from suit. No money may be paid out of the state treasury to any person, firm, or corporation as a consideration or premium on any such policy or contract of casualty insurance unless the policy or contract contains such an agreement.

History: En. Sec. 411, Ch. 286, L. 1959; amd. Sec. 5, Ch. 234, L. 1977.

munity from suit" for "sovereign immunity" at the end of the first sentence; and made minor changes in phraseology and punctuation.

Amendments

The 1977 amendment substituted "im-

40-4402. Immunity defense prohibited when liability insured—reduction of award to policy limits. Whenever an insurer accepts any premium, money, or other consideration from a political subdivision of the state, municipality, or any public body, corporation, commission, board, agency, organization, or other public entity for casualty or liability insurance, neither such insured nor insurer may raise the defense of immunity from suit in any damage action brought against such insured or insurer, and any agreement in the insurance contract permitting the defense of immunity is void. No attempt may be made in the trial of an action brought against such political subdivision of the state, municipality, or any public body, corporation, commission, board, agency, organization, or other public

entity to suggest the existence of any insurance which covers in whole or in part any judgment or award which may be rendered in favor of plaintiff. If the court determines that the defendant could have successfully raised the defense of immunity, and if the verdict exceeds the limits of the applicable insurance, the court shall reduce the amount of such judgment or award to a sum equal to the applicable limit stated in the policy.

History: En. Sec. 1, Ch. 240, L. 1963; amd. Sec. 6, Ch. 234, L. 1977.

Employers Liability Assurance Corp., 158 M 258, 490 P 2d 717.

Title of Act

An act prohibiting the defense of sovereign immunity where public bodies are insured; prohibiting the suggestion of insurance coverage in actions against public bodies, and providing for the reduction of awards to policy limits where sovereign immunity defense could have been successfully raised; repealing all acts and parts of acts in conflict herewith.

Amendments

The 1977 amendment deleted "sovereign or governmental" before "immunity" throughout the section; inserted "from suit" near the end of the first sentence before "in any damage action"; and made minor changes in phraseology and punctuation.

Repealing Clause

Section 2 of Ch. 240, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Cross-References

Sovereign immunity abolished effective July 1, 1973, 1972 Const., art. II, § 18.

Excessive Liability

If the amount of liability exceeds the amount of insurance, the policy should be delivered by the claimant to the district judge who will apply the limitation requirement of this section. *Boettger v.*

Limitation of Actions

This section merely removes a defense previously existing rather than creating a new cause of action; therefore, action against county by motorist who alleged he suffered personal injuries in a single vehicle accident due to negligent failure of county to properly maintain and mark a "T" intersection of county roads was subject to three year statute of limitations under section 93-2605, as a personal injury negligence action, rather than the two year statute of limitations under 93-2607 (1) as an action "upon a liability created by statute." *State ex rel. Fallon County v. District Court, Sixteenth Judicial Dist., Fallon County, — M —, 505 P 2d 120.*

Parties to Action

In cause of action by administratrix of estate of person allegedly shot in the back by policeman in a negligent, reckless, deliberate, and willful manner, the city was not a proper party. The liability of the police officers in tort must first be determined. If liability is established and insurance exists, then the insurer becomes liable under the policy; should liability be denied, a suit is required and both the insured and insurer would be proper parties. *Boettger v. Employers Liability Assurance Corp., 158 M 258, 490 P 2d 717, distinguished in — M —, 550 P 2d 382.*

40-4403. Motor vehicle liability policies to include uninsured motorist coverage—rejection of coverage by insured. No automobile liability or motor vehicle liability policy insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle, shall be delivered or issued for delivery in this state, with respect to any motor vehicle registered or principally garaged in this state, unless coverage is provided therein or supplemental thereto, in limits for bodily injury or death set forth in section 53-438, under provisions filed with and approved by the insurance commissioner, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom; provided, that the named insured shall have the right to reject such coverage; and, provided

further, that unless the named insured requests such coverage in writing, such coverage need not be provided in or supplemental to a renewal policy where the named insured had rejected the coverage in connection with the policy previously issued to him by the same insurer.

History: En. Sec. 1, Ch. 31, L. 1967; amd. Sec. 2, Ch. 526, L. 1975.

Title of Act

An act relating to automobile liability insurance policies; requiring such policies to contain uninsured motorist provision; permitting rejection of such coverage at the option of the insured; providing for an effective date.

Amendments

The 1975 amendment substituted "section 53-438" for "section 53-422" near the middle of the section.

Effective Date

Section 2 of Ch. 31, Laws 1967 read "This act is effective January 1, 1968."

Recovery from Primary Insurer

Recovery from primary insurer under uninsured motorist coverage, though applied against the total judgment, does not reduce the amount of coverage provided by secondary insurer. *Sullivan v. Doe*, 159 M 50, 495 P 2d 193.

Workmen's Compensation

Since uninsured motorist coverage is intended to place the injured policyholder in the same position he would have been if the uninsured motorist had liability insurance, the amount of plaintiff's recovery from uninsured motorist coverage cannot be reduced by any workmen's compensation benefits received by him, and the insurance commissioner had no authority to approve a policy providing for such reduction. *Sullivan v. Doe*, 159 M 50, 495 P 2d 193.

40-4404. Reimbursement for total loss of motor vehicle based on actual replacement value. Each automobile insurance policy issued to residents of this state which provides that reimbursement for total loss of a motor vehicle shall be based on a "book" value rather than on the actual replacement value is void as to such provision and reimbursement shall be made for actual replacement value.

History: En. Sec. 1, Ch. 182, L. 1969.

Title of Act

An act to provide that motor vehicle

insurance must provide that reimbursement for a total loss of the vehicle be based on the actual replacement value of the vehicle and not on a book value.

40-4405. Notice required for cancellation of auto liability insurance. Notwithstanding any other provision of this code, no cancellation by an insurer of an auto liability insurance policy shall be effective prior to the mailing or delivery to the named insured at the address shown in the policy, of a written notice of the cancellation stating when, not less than thirty (30) days after the date of such mailing or delivery, the date the cancellation shall become effective.

History: En. Sec. 1, Ch. 262, L. 1971.

Title of Act

An act to establish a law concerning cancellation of automobile liability insurance policies.

40-4406. Notice to insured of ground for cancellation—commissioner to ensure compliance. Whenever an insurer gives notice of cancellation of an automobile liability policy, upon request of the insured, the insurer, within fifteen (15) days of receipt of the request, shall furnish to the insured a statement setting forth the ground or grounds upon which the notice of cancellation is based. If the insurer fails to comply with the provisions of this section, the insured may apply to the commissioner for

a certificate of the facts or information desired. The commissioner shall exercise any power conferred upon him by law as may be necessary to ensure compliance with this section.

History: En. Sec. 2, Ch. 262, L. 1971.

40-4407. Reasons for cancellation. (1) A notice of cancellation of a policy shall be effective only if it is based on one or more of the following reasons:

(a) Nonpayment of premium; or

(b) The driver's license or motor vehicle registration of the named insured or of any other operator who either resides in the same household or customarily operates an automobile insured under the policy has been under suspension or revocation during the policy period or, if the policy is a renewal, during its policy period or the one hundred eighty (180) days immediately preceding its effective date.

(2) This section shall not apply to any policy or coverage which has been in effect less than sixty (60) days at the time notice of cancellation is mailed or delivered by the insurer unless it is a renewal policy.

(3) Modification of automobile physical damage coverage by the inclusion of a deductible not exceeding one hundred dollars (\$100) shall not be deemed a cancellation of the coverage or of the policy.

(4) This section shall not apply to nonrenewal.

History: En. Sec. 3, Ch. 262, L. 1971.

40-4408. Notice of cancellation to be mailed 30 days in advance—exception—statement that insurer will specify reason upon request. No notice of cancellation of a policy to which section 3 [40-4407] applies shall be effective unless mailed or delivered by the insurer to the named insured at least thirty (30) days prior to the effective date of cancellation; provided, however, that where cancellation is for nonpayment of premium, at least ten (10) days' notice of cancellation accompanied by the reason therefor shall be given. Unless the reason accompanies or is included in the notice of cancellation, the notice of cancellation shall state or be accompanied by a statement that upon written request of the named insured, mailed or delivered to the insurer not less than fifteen (15) days prior to the effective date of cancellation, the insurer will specify the reason for such cancellation.

This section shall not apply to nonrenewal.

History: En. Sec. 4, Ch. 262, L. 1971.

40-4409. Advance notice required for nonrenewal—exceptions—exemptions. No insurer shall fail to renew a policy unless it shall mail or deliver to the named insured, at the address shown in the policy, at least thirty (30) days' advance notice of its intention not to renew. Such notice shall contain or be accompanied by a statement that upon written request made not later than one (1) month following the termination date of the policy of the named insured mailed or delivered to the insurer, the insurer will notify the insured in writing, within fifteen (15)

days of his request, the reason or reasons for such nonrenewal; provided, however, that notwithstanding the failure of an insurer to comply with this section, the policy shall terminate on the effective date of any other replacement or succeeding automobile liability insurance policy procured by the insured, with respect to any automobile designated in both policies. This section shall not apply where the named insured has failed to discharge when due any of his obligations in connection with the payment of premiums for the policy, or the renewal thereof, or any installment payments therefor, whether payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit. This section shall not apply in any of the following cases:

(a) If the insurer has manifested its willingness to renew.

(b) In case of nonpayment of premium; provided that, notwithstanding the failure of an insurer to comply with this section, the policy shall terminate on the effective date of any other insurance policy with respect to any automobile designated in both policies.

(c) If the insured's agent or broker has secured other coverage acceptable to the insured at least twenty (20) days prior to the anniversary date of the policy or termination of the policy period.

Renewal of a policy shall not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of such renewal.

A notice of nonrenewal of a policy under this section, which policy has a term of less than six (6) months, is effective only when based on one or more of the reasons listed in section 40-4407(1).

History: En. Sec. 5, Ch. 262, L. 1971; **Amendments**
amd. Sec. 1, Ch. 249, L. 1975. The 1975 amendment added the last paragraph.

40-4410. Retention and proof of notice. (1) A notice of cancellation or of intention not to renew or of reasons for cancellation of insurance issued under terms of this chapter shall be retained for a period of 3 years by the insurer or his agent within this state and shall be made available within this state for examination or inspection by the commissioner or his agents at any time within such 3-year period upon reasonable notice.

(2) Proof of mailing of notice of cancellation, or of intention not to renew or of reasons for cancellation, to the named insured at the address shown in the policy or to the named insured's latest known address, shall be sufficient proof of notice.

History: En. Sec. 6, Ch. 262, L. 1971; **Amendments**
amd. Sec. 2, Ch. 469, L. 1977. The 1977 amendment inserted subsection (1); and designated the former section as subsection (2).

40-4411. Penalty for violation. Any insurer willfully violating any provisions of section 4 [40-4408] is guilty of a misdemeanor and is punishable by a fine of not exceeding five hundred dollars (\$500) for each violation thereof.

History: En. Sec. 7, Ch. 262, L. 1971.

40-4412. No liability for statements in connection with cancellation or nonrenewal. There shall be no liability on the part of, and no cause of action of any nature shall arise against, the insurance commissioner or against any insurer, its authorized representative, its agents, its employees or any firm, person, or corporation furnishing to the insurer information as to reasons for cancellation or nonrenewal, for any statement made by any of them in any written notice of cancellation or nonrenewal, or for statements made or evidence submitted at any hearings conducted in connection therewith.

History: En. Sec. 8, Ch. 262, L. 1971.

40-4413. Cancellation or increase of premium rates of professional liability insurance by reason of unfounded claims prohibited. Whenever an action for damages is filed against, or a claim or demand for damages is made to an insurer of, a physician and surgeon, dentist, registered nurse, nursing home administrator, licensed physical therapist, podiatrist, psychologist, osteopath, chiropractor, pharmacist, optometrist or veterinarian, duly licensed as such under the laws of this state, or against a licensed hospital or long-term care facility as the employer of any such person, in an action, claim or demand for error, omission, professional negligence, or performance of services without consent, and such action, claim or demand is later determined to be unfounded and no payment is made by the insurer to the claimant on behalf of such licensee or licensed hospital or long-term care facility or is finally determined to establish nonliability to plaintiff by such licensee or licensed hospital or long-term care facility, the fact of such litigation, claim or demand shall not be a ground for cancellation nor for any increase in insurance premium rates of the professional liability insurance during the term of the policy.

History: En. Sec. 1, Ch. 210, L. 1971;
amd. Sec. 1, Ch. 303, L. 1973.

lawsuits that are determined to be unfounded or where nonliability is established.

Title of Act

An act to prohibit insurers from canceling a professional liability insurance policy or increasing the premium rates thereon because of claims, demands or

Amendments

The 1973 amendment extended this section to nursing home administrators and long-term care facilities.

40-4414. Cancellation or increase of premium rates of professional liability insurance—60 days' written notice required. Any insurer who insures a physician and surgeon, dentist, registered nurse, nursing home administrator, registered physical therapist, podiatrist, licensed psychologist, osteopath, chiropractor, pharmacist, optometrist, or veterinarian, duly licensed as such under the laws of this state, or a licensed hospital or long-term care facility as the employer of any such person against liability for error, omission, professional negligence, or performance of services without consent, shall not cancel the policy so insuring such person or increase the premium rates thereon without first providing the insured sixty (60) days written notice of the insurer's intention to cancel the policy or increase the premium rates.

History: En. Sec. 1, Ch. 14, L. 1971;
amd. Sec. 2, Ch. 303, L. 1973.

Title of Act

An act to prohibit insurers from can-

canceling a professional liability insurance policy or increasing the premium rates thereon without first providing the insured sixty (60) days notice in writing prior to such cancellation or increase in premium rate.

Amendments

The 1973 amendment extended this section to nursing home administrators and long-term care facilities.

40-4415. Written notice required for cancellation or nonrenewal of insurance policies on homes. No insurer shall cancel or refuse to renew any policy insuring private residences including but not limited to fire, homeowner, theft or liability insurance on any home occupied by the insured as a domicile without first giving to the insured thirty (30) days' notice in writing, including in the notice a statement of the specific reason or reasons for canceling or not renewing the policy.

History: En. Sec. 1, Ch. 374, L. 1971; amd. Sec. 1, Ch. 82, L. 1975.

Title of Act

An act to require thirty day notice of cancellation or nonrenewal of fire insurance policies and providing a penalty for violation under section 40-2617, R. C. M., 1947.

Amendments

The 1975 amendment substituted "policy insuring private residences including but not limited to fire, homeowner, theft or liability insurance" for "policy providing fire coverage"; and added "including in the notice a statement of the specific reason or reasons for canceling or not renewing the policy."

40-4416. Penalty for cancellation or nonrenewal of insurance policies on homes without required notice. Violation of section 40-4415 is punishable under section 40-2617, R. C. M., 1947 (general penalty).

History: En. Sec. 2, Ch. 374, L. 1971; amd. Sec. 2, Ch. 82, L. 1975.

Amendments

The 1975 amendment deleted "fire" be-

fore "insurance policies" in the caption; inserted "on homes" in the caption; and substituted "section 40-4415" for "this section."

CHAPTER 46—TITLE INSURANCE

40-4601. Policy based on title evidence.

Constitutionality

This section discriminates in favor of those agents who were writing title insurance on the basis of legal opinions at the time the law became effective, and against those agents who later attempted

to issue title insurance, and thereby is in violation of the guarantee of equal protection of the laws, and unconstitutional. *Montana Land Title Assn. v. First American Title*, — M —, 539 P 2d 711.

CHAPTER 47—ORGANIZATION AND CORPORATE PROCEDURES OF STOCK AND MUTUAL INSURERS

- Section 40-4705.** Incorporation.
40-4745. Mergers and consolidations of stock insurers.
40-4751. Equity securities of domestic stock insurance company—statement of ownership.
40-4752. Equity securities of domestic stock insurance company—inside trading—profit inures to company—limitation of action to recover.
40-4753. Short sales of equity securities prohibited—time for delivery after sale.
40-4754. Exemptions—securities held in an investment account—primary or secondary market.
40-4755. Exemptions—arbitrage transactions.
40-4756. "Equity security" defined.

- 40-4757. Exemptions—registered securities—holding by less than one hundred persons.
- 40-4758. Rules and regulations of commissioner—classifications—effect.
- 40-4759. Definitions.
- 40-4760. Professionals as members, stockholders, or subscribers of mutual, stock, or reciprocal insurance insurers.
- 40-4761. Incorporation and regulation.
- 40-4762. Initial qualifications.
- 40-4763. Foreign or alien insurers—certification.

40-4705. Incorporation. (1) This section applies to stock and mutual insurers hereafter incorporated in this state.

(2) Incorporators. Five (5) or more individuals, none of whom are less than eighteen (18) years of age, may incorporate a stock insurer; ten (10) or more of such individuals may incorporate a mutual insurer. At least a majority of the incorporators shall be citizens of the United States. At least a majority of the incorporators shall be residents of this state.

(3) Articles of incorporation. The incorporators shall execute articles of incorporation in quadruplicate and acknowledge their execution thereof in the same manner as provided by law for the acknowledgment of deeds. The articles of incorporation shall state the purpose for which the corporation is formed and shall show:

(a) to (c) * * * [Same as parent volume.]

(d) If a stock corporation, its authorized capital stock, the number of shares of common stock into which divided, the par value of each such share, which par value shall be at least one dollar (\$1). Shares without par value, or other than one (1) class of voting common stock, shall not be authorized. The articles of incorporation may limit or deny present or future stockholders pre-emptive or preferential rights to acquire additional issues of the stock, or bonds, debentures or other obligations convertible into stock, of the corporation, subject to the laws of Montana fixing the required representation and proportion of outstanding capital stock required to be represented and voted, for specified action, at any and all corporate meetings, elections, votes or consent proceedings.

(e) to (k). * * * [Same as parent volume.]

History: En. Sec. 422, Ch. 286, L. 1959; amd. Sec. 7, Ch. 423, L. 1971; amd. Sec. 18, Ch. 100, L. 1973. specified in the first sentence of subsection (2) from 21 to 18 years. The 1973 amendment deleted "constitution and" before "laws of Montana" in the third sentence of subdivision (3)(d).

Amendments

The 1971 amendment reduced the age

40-4743. Mutualization of stock insurers.

Compiler's Notes

Section 15-1905, referred to in subd. (e) of subsection (2) of this section in the

parent volume, was repealed by Sec. 143, Ch. 300, Laws 1967.

40-4745. Mergers and consolidations of stock insurers. (1) A domestic stock insurer may merge or consolidate with one or more domestic or foreign stock corporations authorized to transact business in this state and by complying with the applicable provisions of the statutes of this state governing the merger or consolidation of stock corporations formed for profit, but subject to subsections (2) and (3) below.

(2) to (6) * * * [Same as parent volume.]

History: En. Sec. 462, Ch. 286, L. 1959; amd. Sec. 1, Ch. 151, L. 1971.

minor changes in phraseology and punctuation.

Amendments

The 1971 amendment substituted "corporations authorized to transact business" for "insurers authorized to transact insurance" in subsection (1); and made

Effective Date

Section 2 of Ch. 151, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 1, 1971.

40-4751. Equity securities of domestic stock insurance company—statement of ownership. Every person who is directly or indirectly the beneficial owner of more than ten per cent (10%) of any class of any equity security of a domestic stock insurance company, or who is a director or an officer of such company, shall file with the commissioner of insurance within ten (10) days after he becomes such beneficial owner, director or officer, a statement in such form as the commissioner may prescribe, of the amount of all equity securities of such company of which he is the beneficial owner, and within ten (10) days after the close of each calendar month thereafter. If there has been a change in such ownership during such month, such person shall file with the commissioner a statement, in such form as the commissioner may prescribe, indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month.

History: En. Sec. 1, Ch. 159, L. 1965.

domestic stock insurance company equity securities.

Title of Act

An act relating to insider trading of

40-4752. Equity securities of domestic stock insurance company—inside trading—profit inures to company—limitation of action to recover. For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director or officer by reason of his relationship to such company, any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of such company within any period of less than six (6) months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the company, irrespective of any intention on the part of such beneficial owner, director or officer in entering into such transaction of holding the security purchased or of not repurchasing the security sold for a period exceeding six (6) months. Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the company, or by the owner of any security of the company in the name and in behalf of the company if the company shall fail or refuse to bring such suit within sixty (60) days after request or shall fail diligently to prosecute the same thereafter; but no such suit shall be brought more than two (2) years after the date such profit was realized. This section shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security involved, or any transaction or transactions

which the commissioner by rules and regulations may exempt as not comprehended within the purpose of this section.

History: En. Sec. 2, Ch. 159, L. 1965.

40-4753. Short sales of equity securities prohibited—time for delivery after sale. It shall be unlawful for any such beneficial owner, director or officer, directly or indirectly, to sell any equity security of such company if the person selling the security or his principal (i) does not own the security sold, or (ii) if owning the security, does not deliver it against such sale within twenty (20) days thereafter, or does not within five (5) days after such sale deposit it in the mails or other usual channels of transportation; but no person shall be deemed to have violated this section if he proves that notwithstanding the exercise of good faith he was unable to make such delivery or deposit within such time, or that to do so would cause undue inconvenience or expense.

History: En. Sec. 3, Ch. 159, L. 1965.

40-4754. Exemptions—securities held in an investment account—primary or secondary market. The provisions of section 2 [40-4752] of this act shall not apply to any purchase and sale, or sale and purchase, and the provisions of section 3 [40-4753] of this act shall not apply to any sale, of an equity security of a domestic stock insurance company not then or theretofore held by him in an investment account, by a broker-dealer in the ordinary course of his business and incident to the establishment or maintenance by him of a primary or secondary market (otherwise than on an exchange as defined in the Securities Exchange Act of 1934) for such security. The commissioner may, by such rules and regulations as he deems necessary or appropriate in the public interest, define and prescribe terms and conditions with respect to securities held in an investment account and transactions made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market.

History: En. Sec. 4, Ch. 159, L. 1965.

40-4755. Exemptions—arbitrage transactions. The provisions of sections 1, 2, and 3 [40-4751, 40-4752 and 40-4753] of this act shall not apply to foreign or domestic arbitrage transactions unless made in contravention of such rules and regulations as the commissioner may adopt in order to carry out the purposes of this act.

History: En. Sec. 5, Ch. 159, L. 1965.

40-4756. "Equity security" defined. The term "equity security" when used in this act means any stock or similar security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the commissioner shall deem to be of similar nature and consider necessary or appropriate, by such rules and regulations as he may prescribe in the

public interest or for the protection of investors, to treat as an equity security.

History: En. Sec. 6, Ch. 159, L. 1965.

40-4757. Exemptions—registered securities—holding by less than one hundred persons. The provisions of sections 1, 2, and 3 [40-4751, 40-4752 and 40-4753] of this act shall not apply to equity securities of a domestic stock insurance company if (a) such securities shall be registered, or shall be required to be registered, pursuant to section 12 of the Securities Exchange Act of 1934, as amended, or if (b) such domestic stock insurance company shall not have any class of its equity securities held of record by one hundred (100) or more persons on the last business day of the year next preceding the year in which equity securities of the company would be subject to the provisions of sections 1, 2, and 3 [40-4751, 40-4752 and 40-4753] of this act except for the provisions of this subsection (b).

History: En. Sec. 7, Ch. 159, L. 1965.

40-4758. Rules and regulations of commissioner — classifications — effect. The commissioner may make such rules and regulations as may be necessary for the execution of the functions vested in him by sections 1 through 7 [40-4751 to 40-4757] of this act, and may for such purpose classify domestic stock insurance companies, securities, and other persons or matters within his jurisdiction. No provision of sections 1, 2, and 3 [40-4751, 40-4752 and 40-4753] of this act imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule or regulation of the commissioner notwithstanding that such rule or regulation may, after such act or omission, be amended or rescinded or determined by judicial or other authority to be invalid for any reason.

History: En. Sec. 8, Ch. 159, L. 1965.

40-4759. Definitions. As used in this act, the following definitions apply:

(1) “Commissioner” means the commissioner of insurance or a designee.

(2) “Health care provider” means any person, corporation, facility, or institution of a governmental unit of any state licensed by that state to provide health care, including but not limited to physician, osteopath, registered nurse, licensed practical nurse, dentist, optometrist, podiatrist, hospital, hospital-related facility, or long-term care facility.

(3) “Other professional” means an attorney, certified public accountant, public accountant, architect, veterinarian, pharmacist, and professional engineer licensed or otherwise legally authorized by a state to render professional services.

History: En. 40-4759 by Sec. 1, Ch. 119, L. 1977.

Title of Act

An act to authorize the establishment of mutual, stock, or reciprocal insurance

companies to provide insurance coverage for professional liability claims resulting from the rendering of or failure to render professional services by health care providers or other professionals of the United States.

40-4760. Professionals as members, stockholders, or subscribers of mutual, stock, or reciprocal insurance insurers. A health care provider or other professional may be a member of a mutual insurer, a stockholder of a stock insurer, or a subscriber of a reciprocal insurer, whether such mutual, stock, or reciprocal insurer is domestic, foreign, or alien, for the purpose of protecting themselves by insurance against loss, damage, or expense incident to a claim arising out of a breach of contract, pecuniary or personal injury to or death of any person, or other loss as the result of negligence in rendering professional services by any health care provider or other professional.

History: En. 40-4760 by Sec. 2, Ch. 119, L. 1977.

40-4761. Incorporation and regulation. A domestic mutual, stock, or reciprocal insurer, organized for the purpose of transacting insurance business as set forth in 40-4760, shall organize under the provisions of Title 40 and be regulated as therein provided. The provisions of this act govern whenever in conflict with other laws or parts of laws of any state.

History: En. 40-4761 by Sec. 3, Ch. 119, L. 1977.

40-4762. Initial qualifications. No original certificate of authority for a mutual, stock, or reciprocal insurer may be issued by the commissioner until applications representing 250 members of the profession under consideration have been received by the commissioner or in the case of health care providers that are hospitals, hospital-related facilities, or long-term care facilities, applications representing 50% of the beds in the state or states affected, and until the commissioner has determined that such insurer or insurers have bona fide applications representing the number of applicants required.

History: En. 40-4762 by Sec. 4, Ch. 119, L. 1977.

40-4763. Foreign or alien insurers—certification. Any mutual, stock, or reciprocal insurer organized under the laws of another state substantially similar to this act for the purpose of transacting the kind of business described in this act may, upon an application and without prior operating experience or examination, be admitted to solicit applications. If the necessary number of applications is obtained, the insurer may do business in this state if the commissioner finds such admission is in the public interest. Thereafter the insurer shall make all reports and be subject to taxation, examination, and supervision by the commissioner to the same extent and in the same manner as are other foreign or alien insurers.

History: En. 40-4763 by Sec. 5, Ch. 119, L. 1977.

CHAPTER 48—FARM MUTUAL INSURERS

Section 40-4804. Limit of risk.

40-4807. Who may form a farm mutual insurer.

40-4801. Scope of chapter—provisions exclusive.**Compiler's Notes**

Sections 40-1501 to 40-1517 and 40-1601 to 40-1625, referred to in subdivisions (1)

(a) and (1)(b) of this section in the parent volume, were repealed by Sec. 673, Ch. 286, Laws 1959.

40-4804. Limit of risk. (1) The maximum amount of insurance which an insurer shall retain on a single risk, after deduction of applicable reinsurance, shall not exceed ten per cent (10%) of the admitted assets of the insurer or twenty-five thousand dollars (\$25,000), whichever is the larger amount.

(2) * * * [Same as parent volume.]

History: En. Sec. 471, Ch. 286, L. 1959; amd. Sec. 1, Ch. 259, L. 1967; amd. Sec. 1, Ch. 94, L. 1975.

teen thousand dollars (\$15,000)" for "five thousand dollars" in subsection (1).

The 1975 amendment increased the cash limitation from \$15,000 to \$25,000 in subsection (1).

Amendments

The 1967 amendment substituted "fif-

40-4807. Who may form a farm mutual insurer. (1) One hundred (100) or more individuals residing in this state, each of whom is eighteen (18) years of age or more, who collectively own farm property as referred to in section 40-4803 (1) (a) of this chapter valued at not less than five hundred thousand dollars (\$500,000) which they desire to insure, and each of whom owns farm lands or ranch lands situated in this state valued at not less than five thousand dollars (\$5,000), may incorporate a state mutual insurer.

(2) Twenty-five (25) or more individuals residing in this state, each of whom is eighteen (18) years or more of age, each of whom owns farm land or ranch land valued at five thousand dollars (\$5,000) or more in the county wherein is to be located the principal office of the proposed insurer, or in any county in this state contiguous with such county, and who collectively own in such counties farm property referred to in section 40-4803 (1) (a) of this chapter valued at not less than one hundred twenty-five thousand dollars (\$125,000) which they desire to insure, may incorporate a county mutual insurer.

History: En. Sec. 474, Ch. 286, L. 1959; amd. Sec. 8, Ch. 423, L. 1971.

Amendments

The 1971 amendment reduced the minimum age specified in each of the two subsections from 21 to 18 years.

CHAPTER 49—BENEVOLENT ASSOCIATIONS

Section 40-4902. "Benevolent association" defined.

40-4913. Expenses—assessment for expenses—shown in annual statement.

40-4917. Other provisions applicable.

40-4918. Annual license.

40-4902. "Benevolent association" defined. (1) * * * [Same as parent volume.]

(2) The definition of benevolent association in subsection (1) above is not applicable to:

(a) * * * [Same as parent volume.]

(b) Any auxiliaries to any labor union, railroad brotherhood or lodge referred to in subdivision (a) above; or

(c) * * * [Same as parent volume.]

History: En. Sec. 522, Ch. 286, L. 1959;
amd. Sec. 20, Ch. 535, L. 1975.

Amendments

The 1975 amendment deleted "ladies" before "auxiliaries" in subdivision (2)(b).

40-4913. Expenses—assessment for expenses—shown in annual statement. (1) The total expenses of any benevolent association during any calendar year shall not exceed the larger of the following:

(a) Twenty per cent (20%) of the total amount received during such year, whether as assessments, dues, donations or by whatever name called, except fees collected for new memberships; or

(b) Fifteen dollars (\$15) per death loss incurred during such year.

(2) and (3) * * * [Same as parent volume.]

History: En. Sec. 533, Ch. 286, L. 1959;
amd. Sec. 1, Ch. 224, L. 1975.

Amendments

The 1975 amendment increased the expenses allowed in subdivision (1)(a) from 10% to 20% of the total amount received.

40-4917. Other provisions applicable. In addition to the provisions contained in this chapter, other chapters and provisions of this title shall apply to benevolent associations, to the extent applicable, as follows:

(1) Chapter 26 (scope of code).

(2) Chapter 27 (the commissioner of insurance), except section 40-2726 fees and licenses.

(3) to (9) * * * [Same as parent volume.]

History: En. Sec. 537, Ch. 286, L. 1959;
amd. Sec. 1, Ch. 297, L. 1971.

Amendments

The 1971 amendment added the exception to subdivision (2).

40-4918. Annual license. Associations which are now authorized to transact business in this state may continue such business until the first day of June next succeeding the effective date of this section. The authority of such association may thereafter be renewed annually, but in all cases to terminate on the first day of the succeeding June. However, a license so issued shall continue in full force and effect until the new license be issued or specifically refused. For each such license or renewal the association shall pay the commissioner twenty-five dollars (\$25). A duly certified copy or duplicate of such license shall be prima facie evidence that the licensee is a benevolent association within the meaning of this chapter.

History: En. 40-4918 by Sec. 2, Ch. 297,
L. 1971.

an annual license for benevolent associations and providing an effective date.

Title of Act

An act to amend section 40-4917, R. C. M. 1947, exempting benevolent associations from licenses and fees and to add a new section numbered 40-4918 requiring

Effective Date

Section 3 of Ch. 297, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 11, 1971.

CHAPTER 51—REHABILITATION AND LIQUIDATION

Section 40-5127. Priority of claims for compensation.

40-5134. Proposal for disbursement.

40-5101. Definitions.

NOTE.—Uniform State Law. In addition to the states listed in the note in the parent volume the following also have adopted the Uniform Insurers Liquidation Act: Alaska, Arizona, Arkansas, Florida, Idaho, Oklahoma, Tennessee, West Virginia, Wisconsin and Wyoming.

40-5127. Priority of claims for compensation. (1) Compensation actually owing to employees other than officers of an insurer, for services rendered within 3 months prior to the commencement of a proceeding against the insurer under this chapter, but not exceeding \$500 for each employee, shall be paid prior to the payment of any other debt or claim, and in the discretion of the commissioner may be paid as soon as practicable after the proceeding has been commenced; except that at all times the commissioner shall reserve such funds as will in his opinion be sufficient for the expenses of administration. Such priority shall be in lieu of any other similar priority which may be authorized by law as to wages or compensation of such employees.

(2) The priorities of distribution in a liquidation proceeding shall be in the following order:

- (a) expenses of administration;
- (b) compensation of employees as provided in subsection (1);
- (c) claims for taxes and debts due the federal or any state or local government which are secured by liens perfected prior to the commencement of delinquency proceedings;
- (d) claims by policyholders, beneficiaries, and insureds arising from and within the coverage of and not in excess of the applicable limits of insurance policies and insurance contracts issued by the company and liability claims against insurers which claims are within the coverage of and not in excess of the applicable limits of insurance policies and insurance contracts issued by the company, as well as claims presented by the Montana insurance guaranty association, the Montana life and guaranty association, or any similar organization in another state which represents covered claims as defined in 40-5705(3) or contractual obligations as defined in 40-5805;
- (e) all other claims including subrogation claims of other insurers.

History: En. Sec. 592, Ch. 286, L. 1959;
amd. Sec. 1, Ch. 200, L. 1977.

Amendments

The 1977 amendment combined former subsections (1) and (2); added subsection (2); and made minor changes in style.

40-5134. Proposal for disbursement. (1) Within 120 days of a final determination of insolvency of a company by a court of competent jurisdiction, the receiver shall make application to the court for approval of a proposal to disburse assets out of such company's marshaled assets, from time to time as such assets become available, to the Montana insurance guaranty association, the Montana life and health guaranty association or

to any entity or person performing a similar function in another state. Such associations are herein referred to as the associations.

(2) Such proposal shall at least include provisions for:

(a) reserving amounts for the payment of expenses of administration and the payment of claims of secured creditors to the extent of the value of the security held and claims falling within the priorities established in subsections (2)(a), (2)(b), (2)(c), and (2)(d) of 40-5127;

(b) disbursement of the assets marshaled to date and subsequent disbursements of assets as they become available;

(c) equitable allocation of disbursements to each of the associations entitled thereto;

(d) the securing by the receiver from each of the associations entitled to disbursements pursuant to this section of an agreement to return to the receiver, without interest, such assets previously disbursed as may be required to pay claims of secured creditors and claims falling within the priorities established in subsections (2)(a), (2)(b), (2)(c), and (2)(d) of 40-5127 in accordance with such priorities. No bond may be required of any such association.

(e) a full report to be made by the association to the receiver accounting for all assets so disbursed to the association, all disbursements made therefrom, any interest earned by the association on such assets, and any other matter as the court may direct.

(3) The receiver's proposal shall provide for disbursements to the associations in amounts estimated to be at least equal to the claim payments made or to be made thereby for which such associations could assert a claim against the receiver and shall further provide that if the assets available for disbursement from time to time do not equal or exceed the amount of such claim payments made or to be made by the associations, then disbursements shall be in the amount of available assets.

(4) The receiver's proposal shall, with respect to an insolvent insurer writing life or health insurance or annuities, provide for disbursements of assets to the Montana life and health guaranty association or to any other entity or organization reinsuring, assuming, or guaranteeing policies or contracts of insurance under the provisions of the Montana life and health guaranty association act.

(5) Notice of such application shall be given to the associations in and to the commissioners of insurance of each of the states. Any such notice is considered to have been given when deposited in the United States mail, certified and first-class postage prepaid, at least 30 days prior to submission of such application to the court. Action on the application may be taken by the court provided the above-required notice has been given and provided further that the receiver's proposal complies with subsections (2)(a) and (2)(d).

History: En. 40-5134 by Sec. 2, Ch. 200, L. 1977.

Title of Act

An act to clarify the order of priorities

for the distribution of the assets of liquidated insurance companies and giving the receiver earlier access to the use of assets of insolvent insurance companies; amending section 40-5127, R. C. M. 1947.

CHAPTER 53—FRATERNAL BENEFIT SOCIETIES

- Section 40-5305. Exempted societies.
 40-5321. Qualifications for membership.
 40-5324. Benefits on lives of children.

40-5305. Exempted societies. (1) Nothing contained in this chapter shall be so construed as to affect or apply to:

(a) * * * [Same as parent volume.]

(b) Orders, societies or associations which admit to membership only persons engaged in one or more crafts or hazardous occupations, in the same or similar lines of business, and the auxiliaries to such orders, societies or associations;

(c) and (d) * * * [Same as parent volume.]

(2) to (6) * * * [Same as parent volume.]

History: En. Sec. 618, Ch. 286, L. 1959; Amendments
 amd. Sec. 21, Ch. 535, L. 1975.

The 1975 amendment substituted "auxiliaries" for "ladies' societies or ladies' auxiliaries" in subdivision (1)(b).

40-5321. Qualifications for membership. A society may admit to benefit membership any person not less than fifteen (15) years of age, nearest birthday, who has furnished evidence of insurability acceptable to the society. Any such member who shall apply for additional benefits more than six (6) months after becoming a benefit member shall furnish additional evidence of insurability acceptable to the society.

Any person admitted prior to attaining the full age of eighteen (18) years shall be bound by the terms of the application and certificate and by all the laws and rules of the society and shall be entitled to all the rights and privileges of membership therein to the same extent as though the age of majority had been attained at the time of application. A society may also admit general or social members who shall have no voice or vote in the management of its insurance affairs.

History: En. Sec. 634, Ch. 286, L. 1959; Amendments
 amd. Sec. 9, Ch. 423, L. 1971.

The 1971 amendment reduced the age specified near the beginning of the second paragraph from 21 to 18 years.

40-5324. Benefits on lives of children. (1) A society may provide for benefits on the lives of children under the minimum age for adult membership but not greater than eighteen (18) years of age at time of application therefor, upon the application of some adult person, as its laws or rules may provide, which benefits shall be in accordance with the provisions of section 40-5323 of this chapter. A society may, at its option, organize and operate branches for such children. Membership and initiation in local lodges shall not be required of such children, nor shall they have a voice in the management of the society.

(2). * * * [Same as parent volume.]

History: En. Sec. 637, Ch. 286, L. 1959; Amendments
 amd. Sec. 16, Ch. 94, L. 1973.

The 1973 amendment reduced the age specified in the first sentence of subsection (1) from 21 to 18 years.

CHAPTER 54—EXTENDED HEALTH INSURANCE FOR OLDER PERSONS

- Section 40-5401. **Purpose of act.**
 40-5402. **Definition of terms.**
 40-5403. **Joint underwriting authorized—reduction for other coverage—group policies—availability of coverage.**
 40-5404. **Agents authorized to write coverage.**
 40-5405. **Corporate powers of association—examination of books.**
 40-5406. **Policy forms to be approved—procedure—duplication of federal benefits—reports and information furnished by association.**
 40-5407. **Filing with commissioner by association—deceptive practices prohibited.**
 40-5408. **Exemption of association from other laws.**

40-5401. Purpose of act. It is the purpose of this act to provide a means of more adequately meeting the needs of persons who are 65 years of age or older and their spouses for insurance coverage against financial loss from accident or disease through the combined resources and experience of a number of insurers; to make possible the fullest extension of such coverage by encouraging insurers to combine their resources and experience and to exercise their collective efforts in the development and offering of policies of such insurance to all applicants; and to regulate the joint activities herein authorized in accordance with the intent of Congress as expressed in the act of Congress of March 9, 1945 (Public Law 15, 79th Congress), as amended.

History: En. Sec. 1, Ch. 61, L. 1965.

Title of Act

An act relating to group accident and sickness insurance for persons 65 years of

age or older, and their spouses; providing regulation of such insurance by the commissioner of insurance; and providing an effective date.

40-5402. Definition of terms. Wherever used in this act, the following terms shall have the meanings hereinafter set forth or indicated, unless the context otherwise requires:

(a) "Association" means a voluntary unincorporated association formed for the purpose of enabling co-operative action to provide disability insurance in accordance with this act in this or any other state having legislation enabling the issuance of insurance of the type provided in this act.

(b) "Insurer" means any insurance company which is authorized to transact disability insurance in this state.

(c) "Extended health insurance" means hospital, surgical and medical expense insurance provided by a policy issued as provided by this act.

History: En. Sec. 2, Ch. 61, L. 1965.

40-5403. Joint underwriting authorized—reduction for other coverage—group policies—availability of coverage. Notwithstanding any other provision of this code or any other law which may be inconsistent herewith, any insurer may join with one or more other insurers, to plan, develop, underwrite, and offer and provide to any person who is 65 years of age or older and to the spouse of such person, extended health insurance against financial loss from accident or disease, or both. Such insurance may be offered, issued and administered jointly

by two or more insurers by a group policy issued to a policyholder through an association formed for the purpose of offering, selling, issuing and administering such insurance. The policyholder may be an association, a trustee, or any other person. Any such policy may provide, among other things, that the benefits payable thereunder are subject to reduction if the individual insured has any other coverage providing hospital, surgical or medical benefits whether on an indemnity basis or a provision of service basis resulting in such insured being eligible for more than 100 per cent of covered expenses which he is required to pay, and any insurer issuing individual policies providing extended hospital, surgical or medical benefits to persons 65 years of age and older and their spouses may also use such a policy provision. A master group policy issued to an association or to a trustee or any person appointed by an association for the purpose of providing the insurance described in this act shall be another form of group disability insurance.

Any form of policy approved by the commissioner for an association shall be offered throughout Montana to all persons 65 and older and their spouses, and the coverage of any person insured under such a form of policy shall not be cancellable except for nonpayment of premiums unless the coverage of all persons insured under such form of policy is also canceled.

History: En. Sec. 3, Ch. 61, L. 1965.

40-5404. Agents authorized to write coverage. Notwithstanding the provisions of section 40-3316, any person licensed to transact disability insurance as an insurance agent, may transact extended health insurance and may be paid a commission thereon.

History: En. Sec. 4, Ch. 61, L. 1965.

40-5405. Corporate powers of association—examination of books. Any association formed for the purposes of this act, may hold title to property, may enter into contracts, and may limit the liability of its members to their respective pro rata shares of the liability of such association. Any such association may sue and be sued in its associate name and for such purpose only shall be treated as a domestic corporation. Service of process against such association, made upon a managing agent, any member thereof or any agent authorized by appointment to receive service of process, shall have the same force and effect as if such service had been made upon all members of the association. Such association's books and records shall also be subject to examination under the provisions of sections 40-2713 to 40-2719, inclusive, either separately or concurrently with examination of any of its member insurers.

History: En. Sec. 5, Ch. 61, L. 1965.

40-5406. Policy forms to be approved—procedure—duplication of federal benefits—reports and information furnished by association. The forms of the policies, applications, certificates or other evidence of insurance coverage and applicable premium rates relating thereto shall be filed with the commissioner. No such policy, contract, certificate or other

evidence of insurance, application or other form shall be sold, issued or used and no endorsement shall be attached to or printed or stamped thereon unless the form thereof shall have been approved by the commissioner or 30 days shall have expired after such filing without written notice from the commissioner of disapproval thereof. The commissioner shall disapprove the forms for such insurance if he finds that they are unjust, unfair, inequitable, misleading or deceptive or that the rates are by reasonable assumptions excessive in relation to the benefits provided. In determining whether such rates by reasonable assumptions are excessive in relation to the benefits provided, the commissioner shall give due consideration to past and prospective claim experience, within and outside this state, and to fluctuations in such claim experience, to a reasonable risk charge, to contribution to surplus and contingency funds, to past and prospective expenses, both within and outside this state, and to all other relevant factors within and outside this state including any differing operating methods of the insurers joining in the issue of the policy. In exercising the powers conferred upon him by this act, the commissioner shall not be bound by any other requirement of this code with respect to standard provisions to be included in disability policies or forms.

The commissioner may, after hearing upon written notice, withdraw an approval previously given, upon such grounds as in his opinion would authorize disapproval upon original submission thereof. Any such withdrawal of approval after hearing shall be by notice in writing specifying the ground thereof and shall be effective at the expiration of such period, not less than 90 days after the giving of notice of withdrawal, as the commissioner shall in such notice prescribe.

If and when a program of hospital, surgical and medical benefits is enacted by the federal government or the state of Montana, the extended health insurance benefits provided by policies issued under this act shall be adjusted to avoid any duplication of benefits offered by the federal or state programs and the premium rates applicable thereto shall be adjusted to conform with the adjusted benefits.

The association shall submit an annual report to the insurance commissioner which shall become public information and shall provide information as to the number of persons insured, the names of the insurers participating in the association with respect to insurance offered under this act and the calendar year experience applicable to such insurance offered under this act, including premiums earned, claims paid during the calendar year, the amount of claims reserve established, administrative expenses, commissions, promotional expenses, taxes, contingency reserve, other expenses, and profit and loss for the year. The commissioner shall require the association to provide any and all information concerning the operations of the association deemed relevant by him for inclusion in the report.

History: En. Sec. 6, Ch. 61, L. 1965.

40-5407. Filing with commissioner by association—deceptive practices prohibited. The articles of association of any association formed in accordance with this act, all amendments and supplements thereto, a desig-

nation in writing of a resident of this state as agent for the service of process, and a list of insurers who are members of the association and all supplements thereto shall be filed with the commissioner.

The name of any association or any advertising or promotional material used in connection with extended health insurance to be sold, offered, or issued, pursuant to this act shall not be such as to mislead or deceive the public.

History: En. Sec. 7, Ch. 61, L. 1965.

40-5408. Exemption of association from other laws. No act done, action taken or agreement made pursuant to the authority conferred by this act shall constitute a violation of or grounds for prosecution or civil proceedings under any other law of this state heretofore or hereafter enacted which does not specifically refer to insurance.

History: En. Sec. 8, Ch. 61, L. 1965.

Effective Date

Section 9 of Ch. 61, Laws 1965 pro-

vided the act should be in effect from and after its passage and approval. Approved February 25, 1965.

CHAPTER 55—INSURANCE HOLDING COMPANIES

- Section 40-5501. Short title.
 40-5502. General definitions.
 40-5503. Restrictions on transfers of stock.
 40-5504. Exemptions from prohibitions on stock transfers.
 40-5505. Examination of foreign and domestic holding companies—frequency of examination—submission of annual reports.
 40-5506. Acquisition and transfer of stock—submission of petition—hearings—denial of petition.
 40-5507. Violations of act—penalty.
 40-5508. Filing of false information—penalty.
 40-5509. Definitions.
 40-5510. Subsidiaries of insurers.
 40-5511. Acquisition of control of or merger with domestic insurer.
 40-5512. Registration of insurers.
 40-5513. Standards.
 40-5514. Examination.
 40-5515. Confidential treatment.
 40-5516. Rules and regulations.
 40-5517. Injunctions—prohibitions against voting securities—sequestration of voting securities.
 40-5518. Criminal proceedings.
 40-5519. Receivership.
 40-5520. Revocation, suspension, or nonrenewal of insurer's license.
 40-5521. Judicial review—mandamus.
 40-5522. Conflict with other laws.

40-5501. Short title. This act may be cited as the "Montana Insurance Holding Act."

History: En. Sec. 1, Ch. 269, L. 1967.

Compiler's Notes

The title of Chapter 64, Laws of 1971, referred to a repealer of sections 40-5501 to 40-5508. However, no repealer was contained in the body of the act.

Title of Act

An act to provide for control and regulation of the affairs of domestic and

foreign insurance holding companies; prescribe rules and regulations governing acquisition and disposal of stock of insurance holding companies; prescribe rules and regulations regarding acquisition and disposal of stock of insurance companies by insurance holding companies; exempting certain acquisitions and disposals of stock from the provisions of the act; subjecting domestic insurers coming within the purview of the act to examination by

the insurance department; providing for application to be made to the insurance commissioner to approve certain transactions; providing for judicial review of orders; defining terms; and providing penalties.

40-5502. General definitions. Unless context requires otherwise, in this act:

(1) "Commissioner" means commissioner of insurance of the state of Montana.

(2) "Department" means the department of insurance of the state of Montana.

(3) "Company" means all corporations, joint stock companies, trusts, associations, partnerships, or individuals engaged in the business of insurance as principals.

(4) "Insurance Holding Company" means any company:

(a) which directly or indirectly owns, controls or holds with power to vote fifteen per cent (15%) or more of the voting stock of one or more insurance companies; or

(b) which controls the election of the directors of one or more insurance companies; or

(c) for the benefit of whose stockholders or members, fifteen per cent (15%) or more of the voting stock of one or more insurance companies is held by one or more trustees; and for the purposes of this section, any successor to any company from the date as of which such predecessor company became an insurance holding company.

(5) "Affiliate" means:

(a) any company, fifteen per cent (15%) or more of whose voting stock is owned or controlled by an insurance holding company; or

(b) any company, the election of whose directors is controlled in any manner by an insurance holding company; or

(c) any company, fifteen per cent (15%) or more of whose vote or voting stock is held by trustees for the benefit of the stockholders or members of an insurance holding company.

(6) "Successor" means any company which acquired directly or indirectly from an insurance holding company stock of any insurance company when and if the relationship between such company and insurance holding company is such that the transaction effects no substantial change in the control of the insurance company or beneficial ownership of the stock thereof. The commissioner may, by regulation, further define the word "successor" to the extent necessary to prevent evasion of the purposes of this section.

(7) "Domestic" insurer means one formed under the laws of this state.

(8) "Foreign" insurer means one formed under the laws of any jurisdiction other than this state.

History: En. Sec. 2, Ch. 269, L. 1967.

40-5503. Restrictions on transfers of stock. Except with prior written approval of the commissioner:

(1) No domestic insurance company shall directly or indirectly transfer fifteen per cent (15%) of its voting stock to a foreign or domestic insurance holding company.

(2) No domestic insurance holding company shall transfer, directly or indirectly, ownership or control of voting stock in any other company to a foreign insurance holding company if, after such acquisition, such foreign insurance holding company will own or control, directly or indirectly, fifteen per cent (15%) or more of the voting stock of the company whose shares it acquires.

(3) No domestic insurance holding company shall, directly or indirectly, transfer more than fifteen per cent (15%) of its authorized and outstanding voting stock to any other corporation, association, partnership or individual.

History: En. Sec. 3, Ch. 269, L. 1967.

40-5504. Exemptions from prohibitions on stock transfers. The prohibitions of section 3 [40-5503] shall not apply to:

(1) Stock held in a fiduciary capacity except where such stock is held for the benefit of the shareholders of an insurance company or insurance holding company;

(2) Stock accepted in good faith as collateral security by a company other than an insurance holding company for advances made or stock acquired in good faith; provided, such stock shall be sold or otherwise disposed of within two (2) years from the date of its acquisition unless its further holding is approved by the commissioner;

(3) Stock acquired as a consequence of a merger or consolidation of one insurance company with another, or the conversion of one insurance company into another, or the sale of assets of one insurance company to another where the stock acquired does not represent a larger percentage interest in the stock of the insurance company in which acquired than was held prior to such consolidation, merger, conversion, or sale by the insurance holding company in the insurance company consolidated, merged, or converted, or whose assets were the subject of the sale; or

(4) Any stock acquired in connection with the underwriting of the issue of such stock and which is held only for such period of time as will permit the sale thereof on a reasonable basis as regulated by the Securities Act of Montana.

History: En. Sec. 4, Ch. 269, L. 1967.

40-5505. Examination of foreign and domestic holding companies—frequency of examination—submission of annual reports. Every domestic insurance company, fifteen per cent (15%) of whose stock is held by a domestic or foreign insurance holding company and every domestic insurance holding company as defined by this act, shall be subject to examination by the insurance department of the state of Montana as often as the commissioner deems advisable, but not less frequently than once each year; and shall submit to the commissioner an annual report on forms prescribed by the commissioner.

History: En. Sec. 5, Ch. 269, L. 1967.

40-5506. Acquisition and transfer of stock—submission of petition—hearings—denial of petition. Any company or insurance holding company

desiring to acquire or transfer stock as regulated by section 3 [40-5503] shall submit a petition, in writing, to the commissioner seeking approval of such acquisition or transfer, on such forms as the commissioner may from time to time prescribe and with such information as the commissioner by rule or regulation shall require. Upon receipt of a petition, the commissioner shall grant approval or grant a hearing on the request. If, after such hearing it is decided by the commissioner that such transfer or acquisition is not in the best interest of the stockholders, or policyholders, or that competition among insurance companies will be unnecessarily affected, he shall deny such petition. Upon denial of any petition, the courts of the state of Montana, first judicial district, in and for Lewis and Clark county, shall have jurisdiction to hear an appeal from said denial. A trial de novo shall be granted upon such an appeal.

History: En. Sec. 6, Ch. 269, L. 1967.

40-5507. Violations of act—penalty. Any company which fails to comply with the provisions of this act shall be fined by the commissioner in an amount not to exceed one thousand dollars (\$1,000.00), and the certificate of authority of any domestic insurance company which fails to comply with the provisions of this act shall be revoked by the commissioner, after a hearing held for that purpose.

History: En. Sec. 7, Ch. 269, L. 1967.

40-5508. Filing of false information—penalty. Any individual who knowingly causes, directly or indirectly, false information to be filed with the commissioner contained in any report required under the provisions of this act, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not to exceed five hundred dollars (\$500.00), or by imprisonment in the county jail for not more than six (6) months, or both.

History: En. Sec. 8, Ch. 269, L. 1967.

40-5509. Definitions. As used in this article, the following terms shall have the respective meanings hereinafter set forth, unless the context shall otherwise require:

(a) **Affiliate.** An "affiliate" of, or person "affiliated" with, a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(b) **Commissioner.** The term "commissioner" shall mean the insurance commissioner, his deputies, or the insurance department, as appropriate.

(c) **Control.** The term "control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control

shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten per cent (10%) or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by section 4 [40-5512] (i) that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

(d) Insurance holding company system. An "insurance holding company system" consists of two (2) or more affiliated persons, one (1) or more of which is an insurer.

(e) Insurer. The term "insurer" shall have the same meaning as set forth in section 40-2603, except that it shall not include agencies, authorities or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

(f) Person. A "person" is an individual, a corporation, a partnership, an association, a joint-stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert, but shall not include any securities broker performing no more than the usual and customary broker's function.

(g) Securityholder. A "securityholder" of a specified person is one who owns any security of such person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any of the foregoing.

(h) Subsidiary. A "subsidiary" of a specified person is an affiliate controlled by such person directly, or indirectly through one (1) or more intermediaries.

(i) Voting security. The term "voting security" shall include any security convertible into or evidencing a right to acquire a voting security.

History: En. Sec. 1, Ch. 64, L. 1971.

Title of Act

An act to provide for control and regulation of the affairs of insurance holding companies; prescribe rules and regulations governing acquisition and disposal of insurance holding companies; subjecting do-

mestic insurers to examination by the insurance department; providing for application to be made to the insurance commissioner to approve certain transactions; providing for judicial review; defining terms; and providing penalties; repealing sections 40-5501 through 40-5508, R. C. M., 1947.

40-5510. Subsidiaries of insurers. (a) Authorization. Any domestic insurer, either by itself or in co-operation with one (1) or more persons, may organize or acquire one (1) or more subsidiaries engaged in the following kinds of business:

(1) Any kind of insurance business authorized by the jurisdiction in which it is incorporated.

(2) Acting as an insurance broker or as an insurance agent for its parent or for any of its parent's insurer subsidiaries.

(3) Investing, reinvesting or trading in securities for its own account, that of its parent, any subsidiary of its parent, or any affiliate or subsidiary.

(4) Management of any investment company subject to or registered pursuant to the Investment Company Act of 1940, as amended, including related sales and services.

(5) Acting as a broker-dealer subject to or registered pursuant to the Securities Exchange Act of 1934, as amended.

(6) Rendering investment advice to governments, government agencies, corporations or other organizations or groups.

(7) Rendering other services related to the operations of an insurance business including, but not limited to, actuarial, loss prevention, safety engineering, data processing, accounting, claims, appraisal and collection services.

(8) Ownership and management of assets which the parent corporation could itself own or manage.

(9) Acting as administrative agent for a governmental instrumentality which is performing an insurance function.

(10) Financing of insurance premiums, agents and other forms of consumer financing.

(11) Any other business activity determined by the commissioner to be reasonable ancillary to an insurance business.

(12) Owning a corporation or corporations engaged or organized to engage exclusively in one (1) or more of the businesses specified in this section.

(b) Additional investment authority. In addition to investments in common stock, preferred stock, debt obligations and other securities permitted under all other sections of this chapter, a domestic insurer may also:

(1) Invest, in common stock, preferred stock, debt obligations, and other securities of one (1) or more subsidiaries, amounts which do not exceed the lesser of five per cent (5%) of such insurer's assets or fifty per cent (50%) of such insurer's surplus as regards policyholders, provided that after such investments the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. In calculating the amount of such investments, there shall be included total net moneys or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of such subsidiary whether or not represented by the purchase of capital stock or issuance of other securities, and all amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities and all contributions to the capital or surplus, of a subsidiary subsequent to its acquisition or formation.

(2) If the insurer's total liabilities, as calculated for national association of insurance commissioners annual statement purposes, are less than

ten per cent (10%) of assets, invest any amount in common stock, preferred stock, debt obligations, and other securities of one (1) or more subsidiaries, provided that, after such investment, the insurer's surplus as regards policyholders, considering such investment as if it were a disallowed asset, will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(3) Invest any amount in common stock, preferred stock, debt obligations and other securities of one (1) or more subsidiaries provided that each such subsidiary agrees to limit its investments in any asset so that such investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in this clause, "the total investment of the insurer" shall include:

(i) Any direct investment by the insurer in an asset.

(ii) The insurer's proportionate share of any investment in an asset by any subsidiary of the insurer, which shall be calculated by multiplying the amount of the subsidiary's investment by the percentage of the insurer's ownership of such subsidiary.

(4) With the approval of the commissioner, invest any amount in common stock, preferred stock, debt obligations, or other securities of one (1) or more subsidiaries, provided that after such investment, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(5) Invest any amount in the common stock, preferred stock, debt obligations, or other securities of any subsidiary exclusively engaged in holding title to or holding title to and managing or developing real or personal property, if after considering as a disallowed asset so much of the investment as is represented by subsidiary assets which if held directly by the insurer would be considered as a disallowed asset, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, and if following such investment all voting securities of such subsidiary would be owned by the insurer.

(c) Exemption from investment restrictions. Investments in common stock, preferred stock, debt obligations or other securities of subsidiaries made pursuant to subsection (b) hereof shall not be subject to any of the otherwise applicable restrictions or prohibitions contained in this chapter applicable to such investments of insurers.

(d) Qualification of investment—when determined. Whether any investment pursuant to subsection (b) meets the applicable requirements thereof is to be determined immediately after such investment is made, taking into account the then outstanding principal balance on all previous investments in debt obligations, and the value of all previous investments in equity securities as of the date they were made.

(e) Cessation of control. If an insurer ceases to control a subsidiary, it shall dispose of any investment therein made pursuant to this section within three (3) years from the time of the cessation of control or within such further time as the commissioner may prescribe, unless at any time

after such investment shall have been made, such investment shall have met the requirements for investment under any other section of this chapter, and the insurer has notified the commissioner thereof.

History: En. Sec. 2, Ch. 64, L. 1971.

40-5511. Acquisition of control of or merger with domestic insurer.

(a) Filing requirements. No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of such insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer unless, at the time any such offer, request, or invitation is made or any such agreement is entered into, or prior to the acquisition of such securities if no offer or agreement is involved, such person has filed with the commissioner and has sent to such insurer, and such insurer has sent to its shareholders, a statement containing the information required by this section and such offer, request, invitation, agreement or acquisition has been approved by the commissioner in the manner hereinafter prescribed. For purposes of this section, a domestic insurer shall include any other person controlling a domestic insurer unless such other person is either directly or through its affiliates primarily engaged in business other than the business of insurance.

(b) Content of statement. The statement to be filed with the commissioner hereunder shall be made under oath or affirmation and shall contain the following information:

(1) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection (a) is to be effected (hereinafter called "acquiring party").

(i) If such person is an individual, his principal occupation and all offices and positions held during the past five (5) years, and any conviction of crimes other than minor traffic violations during the past ten years.

(ii) If such person is not an individual, a report of the nature of its business operations during the past five (5) years or for such lesser period as such person and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by such person and such person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of such person, or who perform or will perform functions appropriate to such positions. Such list shall include for each such individual the information required by paragraph (i) of this subsection.

(2) The source, nature and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction wherein funds were or are to be obtained for any such purpose, and the identity of persons furnishing such consideration,

provided, however, that where a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing such statement so requests.

(3) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five (5) fiscal years of each such acquiring party (or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence), and similar unaudited information as of a date not earlier than ninety (90) days prior to the filing of the statement.

(4) Any plans or proposals which each acquiring party may have to liquidate such insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management.

(5) The number of shares of any security referred to in subsection (a) which each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement, or acquisition referred to in subsection (a), and a statement as to the method by which the fairness of the proposal was arrived at.

(6) The amount of each class of any security referred to in subsection (a) which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party.

(7) A full description of any contracts, arrangements, or understandings with respect to any security referred to in subsection (a) in which any acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements or understandings have been entered into.

(8) A description of the purchase of any security referred to in subsection (a) during the twelve (12) calendar months preceding the filing of the statement, by an acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefor.

(9) A description of any recommendations to purchase any security referred to in subsection (a) made during the twelve (12) calendar months preceding the filing of the statement, by any acquiring party, or by anyone based upon interviews or at the suggestion of such acquiring party.

(10) Copies of all tender offers for, requests or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in subsection (a), and (if distributed) of additional soliciting material relating thereto.

(11) The terms of any agreement, contract or understanding made with any broker-dealer as to solicitation of securities referred to in subsection (a) for tender, and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto.

(12) Such additional information as the commissioner may by rule or regulation prescribe as necessary or appropriate for the protection of policyholders and securityholders of the insurer or in the public interest.

If the person required to file the statement referred to in subsection (a) is a partnership, limited partnership, syndicate or other group, the commissioner may require that the information called for by clauses (1) through (12) shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group, and each person who controls such partner or member. If any such partner, member or person is a corporation or the person required to file the statement referred to in subsection (a) is a corporation, the commissioner may require that the information called for by clauses (1) through (12) shall be given with respect to such corporation, each officer and director of such corporation, and each person who is directly or indirectly the beneficial owner of more than ten per cent (10%) of the outstanding voting securities of such corporation.

If any material change occurs in the facts set forth in the statement filed with the commissioner and sent to such insurer pursuant to this section, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the commissioner and sent to such insurer within two (2) business days after the person learns of such change. Such insurer shall send such amendment to its shareholders.

(c) Alternative filing materials. If any offer, request, invitation, agreement or acquisition referred to in subsection (a) is proposed to be made by means of a registration statement under the Securities Act of 1933 or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in subsection (a) may utilize such documents in furnishing the information called for by that statement.

(d) Approval by commissioner—hearings. (1) The commissioner shall approve any merger or other acquisition of control referred to in subsection (a) unless, after a public hearing thereon, he finds that:

(i) After the change of control the domestic insurer referred to in subsection (a) would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed.

(ii) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly therein.

(iii) The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders or the interests of any remaining securityholders who are unaffiliated with such acquiring party.

(iv) The terms of the offer, request, invitation, agreement or acquisition referred to in subsection (a) are unfair and unreasonable to the securityholders of the insurer.

(v) The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest.

(vi) The competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control.

(2) The public hearing referred to in clause (1) shall be held within thirty (30) days after the statement required by subsection (a) is filed, and at least twenty (20) days notice thereof shall be given by the commissioner to the person filing the statement. Not less than seven (7) days notice of such public hearing shall be given by the person filing the statement to the insurer and to such other persons as may be designated by the commissioner. The insurer shall give such notice to its securityholders. The commissioner shall make a determination within thirty (30) days after the conclusion of such hearing. At such hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interests may be affected thereby shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and in connection therewith shall be entitled to conduct discovery proceedings in the same manner as is presently allowed in the district court of this state. All discovery proceedings shall be concluded not later than three (3) days prior to the commencement of the public hearing.

(e) Mailing to shareholders—payment of expenses. All statements, amendments, or other material filed pursuant to subsection (a) or (b), and all notices of public hearings held pursuant to subsection (d), shall be mailed by the insurer to its shareholders within five (5) business days after the insurer has received such statements, amendments, other material, or notices. The expenses of mailing shall be borne by the person making the filing. As security for the payment of such expenses, such person shall file with the commissioner an acceptable bond or other deposit in an amount to be determined by the commissioner.

(f) Exemptions. The provisions of this section shall not apply to:

(i) Any offers, requests, invitations, agreements or acquisitions by the person referred to in subsection (a) of any voting security referred to in subsection (a) which, immediately prior to the consummation of such offer, request, invitation, agreement or acquisition, was not issued and outstanding.

(ii) Any offer, request, invitation, agreement or acquisition which the commissioner by order shall exempt therefrom as (1) not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer, or (2) as otherwise not comprehended within the purposes of this section.

(g) Violations. The following shall be violations of this section:

(i) The failure to file any statement, amendment, or other material required to be filed pursuant to subsection (a) or (b).

(ii) The effectuation or any attempt to effectuate an acquisition of control of, or merger with, a domestic insurer unless the commissioner has given his approval thereto.

(h) Jurisdiction—consent to service of process. The courts of this state are hereby vested with jurisdiction over every person not resident, domiciled, or authorized to do business in this state who files a statement with the commissioner under this section, and over all actions involving such person arising out of violations of this section, and each such person shall be deemed to have performed acts equivalent to and constituting an appointment by such a person of the commissioner to be his true and lawful attorney upon whom may be served all lawful process in any action, suit or proceeding arising out of violations of this section. Copies of all such lawful process shall be served on the commissioner and transmitted by registered or certified mail by the commissioner to such person at his last known address.

History: En. Sec. 3, Ch. 64, L. 1971.

40-5512. Registration of insurers. (a) Registration. Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the commissioner, except a foreign insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this section. Any insurer which is subject to registration under this section shall register within sixty (60) days after the effective date of this article or fifteen (15) days after it becomes subject to registration, whichever is later, unless the commissioner for good cause shown extends the time for registration, and then within such extended time. The commissioner may require any authorized insurer which is a member of a holding company system which is not subject to registration under this section to furnish a copy of the registration statement or other information filed by such insurance company with the insurance regulatory authority of domiciliary jurisdiction.

(b) Information and form required. Every insurer subject to registration shall file a registration statement on a form provided by the commissioner, which shall contain current information about:

(i) The capital structure, general financial condition, ownership and management of the insurer and any person controlling the insurer.

(ii) The identity of every member of the insurance holding company system.

(iii) The following agreements in force, relationships subsisting, and transactions currently outstanding between such insurer and its affiliates:

(1) Loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates.

(2) Purchases, sales, or exchanges of assets.

(3) Transactions not in the ordinary course of business.

(4) Guaranties or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business.

(5) All management and service contracts and all cost-sharing arrangements, other than cost allocation arrangements based upon generally accepted accounting principles.

(6) Reinsurance agreements covering all or substantially all of one (1) or more lines of insurance of the ceding company.

(iv) All matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner.

(c) Materiality. No information need be disclosed on the registration statement filed pursuant to section 4 (b) [subdivision (b) of this section] if such information is not material for the purposes of this section. Unless the commissioner by rule, regulation or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, or investments, involving one-half ($\frac{1}{2}$) of one per cent (1%) or less of an insurer's admitted assets as of the 31st day of December next preceding shall not be deemed material for purposes of this section.

(d) Amendments to registration statements. Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions on amendment forms provided by the commissioner within fifteen (15) days after the end of the month in which it learns of each such change or addition, provided, however, that subject to subsection (c) of section 5 [40-5513], each registered insurer shall so report all dividends and other distributions to shareholders within two (2) business days following the declaration thereof.

(e) Termination of registration. The commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

(f) Consolidated filing. The commissioner may require or allow two (2) or more affiliated insurers subject to registration hereunder to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.

(g) Alternative registration. The commissioner may allow an insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection (a) and to file all information and material required to be filed under this section.

(h) Exemptions. The provisions of this section shall not apply to any insurer, information or transaction if and to the extent that the com-

missioner by rule, regulation, or order shall exempt the same from the provisions of this section.

(i) Disclaimer. Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with such person unless and until the commissioner disallows such a disclaimer. The commissioner shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support such disallowance.

(j) Violations. The failure to file a registration statement or any amendment thereto required by this section within the time specified for such filing shall be a violation of this section.

History: En. Sec. 4, Ch. 64, L. 1971.

40-5513. Standards. (a) Transactions with affiliates. Material transactions by registered insurers with their affiliates shall be subject to the following standards:

(1) The terms shall be fair and reasonable.

(2) The books, accounts and records of each party shall be so maintained as to clearly and accurately disclose the precise nature and details of the transactions.

(3) The insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(b) Adequacy of surplus. For purposes of this article, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, shall be considered:

(1) The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force and other appropriate criteria.

(2) The extent to which the insurer's business is diversified among the several lines of insurance.

(3) The number and size of risks insured in each line of business.

(4) The extent of the geographical dispersion of the insurer's insured risks.

(5) The nature and extent of the insurer's reinsurance program.

(6) The quality, diversification, and liquidity of the insurer's investment portfolio.

(7) The recent past and projected future trend in the size of the insurer's surplus as regards policyholders.

(8) The surplus as regards policyholders maintained by other comparable insurers.

(9) The adequacy of the insurer's reserves.

(10) The quality and liquidity of investments in subsidiaries made pursuant to section 3 [40-5511]. The commissioner may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in his judgment such investment so warrants.

(c) Dividends and other distributions. No insurer subject to registration under section 6 [40-5514] shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until thirty (30) days after the commissioner has received notice of the declaration thereof and has not within such period disapproved such payment, or the commissioner shall have approved such payment within such thirty (30) day period.

For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding twelve (12) months exceeds the greater of ten per cent (10%) of such insurer's surplus as regards policyholders as of the thirty-first day of December next preceding, or the net gain from operations of such insurer, if such insurer is a life insurer, or the net investment income, if such insurer is not a life insurer, for the twelve (12) month period ending the thirty-first day of December next preceding, but shall not include prorata distributions of any class of the insurer's own securities.

Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval thereof, and such a declaration shall confer no rights upon shareholders until the commissioner has approved the payment of such dividend or distribution or the commissioner has not disapproved such payment within the thirty (30) day period referred to above.

History: En. Sec. 5, Ch. 64, L. 1971.

40-5514. Examination. (a) Power of commissioner. Subject to the limitation contained in this section and in addition to the powers which the commissioner has under sections 40-2713, 40-2714, 40-2715, 40-2716, 40-2717, R. C. M., 1947, relating to the examination of insurers, the commissioner shall also have the power to order any insurer registered under section 4 [40-5512] to produce such records, books, or other information papers in the possession of the insurer or its affiliates as shall be necessary to ascertain the financial condition or legality of conduct of such insurer. In the event such insurer fails to comply with such order, the commissioner shall have the power to examine such affiliates to obtain such information.

(b) Purpose and limitation of examination. The commissioner shall exercise his power under subsection (a) above only if the examination of the insurer is inadequate or the interests of the policyholders of such insurer may be adversely affected.

(c) Use of consultants. The commissioner may retain at the registered insurer's expense such attorneys, actuaries, accountants and other experts not otherwise a part of the commissioner's staff as shall be reasonably necessary to assist in the conduct of the examination under subsection (a) above. Any persons so retained shall be under the direction and control of the commissioner and shall act in a purely advisory capacity.

(d) Expenses. Each registered insurer producing for examination records, books and papers pursuant to subsection (a) above shall be liable for and shall pay the expense of such examination.

History: En. Sec. 6, Ch. 64, L. 1971.

40-5515. Confidential treatment. All information, documents and copies thereof obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to section 6 [40-5514] and all information reported pursuant to section 4 [40-5512], shall be given confidential treatment and shall not be subject to subpoena and shall not be made public by the commissioner or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby, notice and opportunity to be heard, determines that the interests of policyholders, shareholders or the public will be served by the publication thereof, in which event he may publish all or any part thereof in such manner as he may deem appropriate.

History: En. Sec. 7, Ch. 64, L. 1971.

40-5516. Rules and regulations. The commissioner may, upon notice and opportunity for all interested persons to be heard, issue such rules, regulations, and orders as shall be necessary to carry out the provisions of this article.

History: En. Sec. 8, Ch. 64, L. 1971.

40-5517. Injunctions—prohibitions against voting securities—sequestration of voting securities. (a) Injunctions. Whenever it appears to the commissioner that any insurer or any director, officer, employee or agent thereof has committed or is about to commit a violation of this article or of any rule, regulation, or order issued by the commissioner hereunder, the commissioner may apply to the district court for the county in which the principal office of the insurer is located or if such insurer has no such office in this state then to the district court for Lewis and Clark county for an order enjoining such insurer or such director, officer, employee or agent thereof from violating or continuing to violate this article or any such rule, regulation or order, and for such other equitable re-

lief as the nature of the case and the interests of the insurer's policyholders, creditors and shareholders or the public may require.

(b) Voting of securities—when prohibited. No security which is the subject of any agreement or arrangement regarding acquisition, or which is acquired or to be acquired, in contravention of the provisions of this article or of any rule, regulation or order issued by the commissioner hereunder may be voted at any shareholders' meeting, or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though such securities were not issued and outstanding; but no action taken at any such meeting shall be invalidated by the voting of such securities, unless the action would materially affect control of the insurer or unless the courts of this state have so ordered. If an insurer or the commissioner has reason to believe that any security of the insurer has been or is about to be acquired in contravention of the provisions of this article or of any rule, regulation or order issued by the commissioner hereunder the insurer or the commissioner may apply to the district court for Lewis and Clark county or to the district court for the county in which the insurer has its principal place of business to enjoin any offer, request, invitation, agreement or acquisition made in contravention of section 5 [40-5513] or any rule, regulation, or order issued by the commissioner thereunder to enjoin the voting of any security so acquired, to void any vote of such security already cast at any meeting of shareholders, and for such other equitable relief as the nature of the case and the interests of the insurer's policyholders, creditors and shareholders or the public may require.

(c) Sequestration of voting securities. In any case where a person has acquired or is proposing to acquire any voting securities in violation of this article or any rule, regulation or order issued by the commissioner hereunder, the district court for Lewis and Clark county or the district court for the county in which the insurer has its principal place of business may, on such notice as the court deems appropriate, upon the application of the insurer or the commissioner seize or sequester any voting securities of the insurer owned directly or indirectly by such person, and issue such orders with respect thereto as may be appropriate to effectuate the provisions of this article. Notwithstanding any other provisions of law, for the purposes of this article the situs of the ownership of the securities of domestic insurers shall be deemed to be in this state.

History: En. Sec. 9, Ch. 64, L. 1971.

40-5518. Criminal proceedings. Whenever it appears to the commissioner that any insurer or any director, officer, employee or agent thereof has committed a willful violation of this article, the commissioner may cause criminal proceedings to be instituted by the district court for the county in which the principal office of the insurer is located or if such insurer has no such office in the state, then by the district court for Lewis and Clark county against such insurer or the responsible director, officer, employee or agent thereof. Any insurer which willfully violates this article may be fined not more than five thousand dollars (\$5,000). Any individual who willfully violates this article may be fined

not more than five hundred dollars (\$500) or, if such willful violation involves the deliberate perpetration of a fraud upon the commissioner, imprisoned not more than two (2) years or both.

History: En. Sec. 10, Ch. 64, L. 1971.

40-5519. Receivership. Whenever it appears to the commissioner that any person has committed a violation of this article which so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, creditors, shareholders or the public, then the commissioner may proceed to take possession of the property of such domestic insurer and to conduct the business thereof.

History: En. Sec. 11, Ch. 64, L. 1971.

40-5520. Revocation, suspension, or nonrenewal of insurer's license. Whenever it appears to the commissioner that any person has committed a violation of this article which makes the continued operation of an insurer contrary to the interests of policyholders or the public, the commissioner may, after giving notice and an opportunity to be heard, determine to suspend, revoke or refuse to renew such insurer's license or authority to do business in this state for such period as he finds is required for the protection of policyholders or the public. Any such determination shall be accompanied by specific findings of fact and conclusions of law.

History: En. Sec. 12, Ch. 64, L. 1971.

40-5521. Judicial review—mandamus. (a) Any person aggrieved by any act, determination, rule, regulation, or order or any other action of the commissioner pursuant to this article may appeal therefrom to the district court for Lewis and Clark county. The court shall conduct its review without a jury and by trial de novo, except that if all parties, including the commissioner, so stipulate, the review shall be confined to the record. Portions of the record may be introduced by stipulation into evidence in a trial de novo as to those parties so stipulating.

(b) The filing of an appeal pursuant to this section shall stay the application of any such rule, regulation, order or other action of the commissioner to the appealing party unless the court, after giving such party notice and an opportunity to be heard, determines that such a stay would be detrimental to the interests of policyholders, shareholders, creditors or the public.

(c) Any person aggrieved by any failure of the commissioner to act or make a determination required by this article may petition the district court for Lewis and Clark county for a writ in the nature of a mandamus or a peremptory mandamus directing the commissioner to act or make such determination forthwith.

History: En. Sec. 13, Ch. 64, L. 1971.

40-5522. Conflict with other laws. All laws and parts of laws of this state inconsistent with this article are hereby superseded with respect to matters covered by this article.

History: En. Sec. 14, Ch. 64, L. 1971.

Separability Clause

Section 15 of Ch. 64, Laws 1971 read "Separability of provisions. If any provision of this article or the application thereof to any person or circumstance is

held invalid, the invalidity shall not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and for this purpose the provisions of this article are separable."

CHAPTER 56—WORKMEN'S COMPENSATION INSURANCE PREMIUM RATES

- Section** 40-5601. Declaration of policy—purpose of act.
 40-5602. Applicability of act.
 40-5603. Certain reciprocal insurers excluded.
 40-5604. Rates, how made.
 40-5605. Excessive, inadequate or discriminatory rates prohibited.
 40-5606. Uniformity neither required nor prohibited.
 40-5616. Membership in rating organization required.
 40-5617. Composition of rating organization.
 40-5618. Division of workers' compensation as member of committee on operation of rating organization—other members.

40-5601. Declaration of policy—purpose of act. (1) It is declared that the public welfare is served by the making of advisory premium rates for workers' compensation insurance coverage in concert.

(2) It is the purpose of this act:

(a) to authorize such rate-making in concert and the operating of rating organizations thereto; and

(b) to establish the general bases and standards for the making of such rates.

History: En. Sec. 1, Ch. 329, L. 1969; amd. Sec. 3, Ch. 558, L. 1977.

Title of Act

An act to establish a policy for the making of premium rates for workmen's compensation insurance issued under plan Number 2 of the Workmen's Compensation Act, sections 92-1001 through 92-1012, R. C. M. 1947, and plan Number 3 of the Workmen's Compensation Act, sections 92-1101 through 92-1123, R. C. M. 1947, and to insurance or guaranty by surety insurers of the obligations of employers under the Workmen's Compensation Act; providing for rate-making factors, rate standards and uniformity of rates, and providing for rate filing, exemptions from filing and effective date of filing; providing for disapproval of rate filing by the state auditor, ex officio commissioner of insurance; providing for disapproval of filing after consideration by the commissioner of insurance; providing for the scope of disapproval power by the commissioner of insurance; providing for adherence to filing; relating to excess rates, deviations from such rates and defining the power of the commissioner of insurance relative thereto; requiring rating organization membership and application of

the laws of Montana as to certain powers of the commissioner of insurance and to certain public employment; repealing all acts and parts of acts in conflict herewith; providing for filings by rating bureaus with the commissioner of insurance, including workmen's compensation insurance; requiring membership in a rating organization of all insurers writing workmen's compensation insurance and requiring membership of the Montana state industrial accident board, without election, on any committee of a rating organization of which it is a member; providing for application to the commissioner of insurance for percentage increase or decrease of premiums and providing procedure therefor; amending section 92-1101, R. C. M. 1947, relating to payment of premiums by employers under plan Number 3 and referring to industrial accident board's membership in a rating organization; amending section 92-1104, R. C. M. 1947, relating to industrial accident board's power to determine premiums and referring to its membership in a rating organization; and amending section 92-1105, R. C. M. 1947, relating to the intent and purpose of plan Number 3, and referring to the industrial accident board's membership in a rating organization.

Amendments

The 1977 amendment inserted "advisory" before "premium rates" in subsection (1); substituted "workers'" in subsection (1) for "workmen's"; deleted "and that the review by the state of the rates so made is necessary and desirable in the public interest" at the end of subsection (1); deleted former subdivision

(2)(c) which read "to provide for review by the state of such rate-making and results thereof"; and made minor changes in phraseology, punctuation and style.

Cross-References

Workmen's Compensation Act, Sec. 92-101 et seq.

40-5602. Applicability of act. This act together and in conjunction with Title 40, chapter 36, applies to the making of premium rates for workers' compensation insurance issued under compensation plan Number 2 of the Workers' Compensation Act, sections 92-1001 to and including 92-1012.

History: En. Sec. 2, Ch. 329, L. 1969; amd. Sec. 4, Ch. 558, L. 1977.

Amendments

The 1977 amendment inserted "together and in conjunction with Title 40, chapter 36" near the beginning of the sec-

tion; substituted "workers'" in two places for "workmen's"; and deleted "and for workmen's compensation insurance issued under compensation plan Number 3 of the Workmen's Compensation Act, sections 92-1101 to and including 92-1123" at the end of the section.

40-5603. Certain reciprocal insurers excluded. This act shall not apply as to any reciprocal insurer transacting workmen's compensation insurance only and insuring solely the hazards or perils of its subscribers exclusively associated with a single industry.

History: En. Sec. 3, Ch. 329, L. 1969.

40-5604. Rates, how made. All rates shall be made in accordance with the following provisions:

(1) Due consideration shall be given to past and prospective loss experience within and outside this state, to catastrophe hazards, if any, to a reasonable margin for underwriting profit and contingencies, to dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers, to past and prospective expenses both country-wide and those specially applicable to this state, and to all other relevant factors within and outside this state.

(2) The systems of expense provisions included in the rates for use by an insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the requirements of the operating methods of any insurer or group with respect to any kind of insurance, or with respect to any subdivision or combination thereof for which subdivision or combination separate expense provisions are applicable.

(3) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates on individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any difference among risks that can be demonstrated to have a probable effect upon losses or expenses.

History: En. Sec. 4, Ch. 329, L. 1969.

40-5605. Excessive, inadequate or discriminatory rates prohibited. Rates shall not be excessive, inadequate or unfairly discriminatory.

History: En. Sec. 5, Ch. 329, L. 1969.

40-5606. Uniformity neither required nor prohibited. Except to the extent necessary to meet the provisions of section 4 [40-5604], uniformity among insurers in any matter within the scope of section 4 [40-5604] and section 5 [40-5605] is neither required nor prohibited.

History: En. Sec. 6, Ch. 329, L. 1969.

40-5607 to 40-5615. Repealed.

Repeal

Sections 40-5607 to 40-5615 (Secs. 7 to 15, Ch. 558, L. 1969), relating to filing of classification manuals, rules and rating plans with the commissioner, were repealed by Sec. 7, Ch. 558, Laws 1977.

40-5616. Membership in rating organization required. (1) Every insurer, including the division of workers' compensation, writing workers' compensation insurance in this state, shall be a member of a workers' compensation rating organization. No insurer may, at the same time, belong to more than one rating organization with respect to such insurance.

(2) A rating organizing shall file with the insurance commissioner every manual of classifications and rules and every rating plan and advisory manual rates, including every modification of the foregoing. Every such filing shall state the effective date thereof. Any insurer writing pursuant to compensation plan number 2 shall adhere to the manual rules and classifications and rating plans of the rating organization of which it is a member and may adopt by reference, in whole or in part, the advisory manual rates filed under this section. Nothing in this section, however, requires adherence by any insurer to any rates established or published by any rating organization.

History: En. Sec. 16, Ch. 329, L. 1969; amd. Sec. 5, Ch. 558, L. 1977.

Amendments

The 1977 amendment designated the former section as subsection (1); substituted

"division of workers' compensation" in subsection (1) for "Montana state industrial accident board"; substituted "workers'" in two places in subsection (1) for "workmen's"; and added subsection (2).

40-5617. Composition of rating organization. Such a rating organization shall have as members not less than five (5) insurers authorized to write and writing workmen's compensation insurance in this state, and whose combined experience is determined by the insurance commissioner to be reasonably adequate for rate-making purposes.

History: En. Sec. 17, Ch. 329, L. 1969.

40-5618. Division of workers' compensation as member of committee on operation of rating organization—other members. In a rating organization of which the division of workers' compensation is a member, it shall be entitled, without election, to membership on any committee thereof established in connection with the operation of the rating organization in this state. One member of each such committee shall be chosen by the stock insurers and one by the nonstock insurers. Such committee shall consist of three (3) members as herein provided for.

History: En. Sec. 18, Ch. 329, L. 1969; amd. Sec. 6, Ch. 558, L. 1977.

Amendments

The 1977 amendment substituted "division of workers' compensation" in the first sentence for "Montana industrial accident board."

Repealing Clauses

Section 19 of Ch. 329, Laws 1969 repealed all acts and parts of acts in conflict therewith.

Section 7 of Ch. 558, Laws 1977 read "Sections 40-5607, 40-5608, 40-5609, 40-5610, 40-5611, 40-5612, 40-5613, 40-5614, and 40-5615, R. C. M. 1947, are repealed."

CHAPTER 57—INSURANCE GUARANTY ASSOCIATION

Section 40-5701.	Title.
40-5702.	Purpose.
40-5703.	Scope.
40-5704.	Construction.
40-5705.	Definitions.
40-5706.	Creation of the association.
40-5707.	Board of directors.
40-5708.	Powers and duties of the association.
40-5709.	Plan of operation.
40-5710.	Duties and powers of the commissioner.
40-5711.	Effect of paid claims.
40-5712.	Nonduplication of recovery.
40-5713.	Prevention of insolvencies.
40-5714.	Examination of the association.
40-5715.	Tax exemption.
40-5716.	Recognition of assessments in rates.
40-5717.	Immunity.
40-5718.	Stay of proceedings—reopening of default judgments.

40-5701. Title. This act shall be known and may be cited as the Montana Insurance Guaranty Association Act.

History: En. Sec. 1, Ch. 63, L. 1971.

Title of Act

A bill to provide a guaranty association

for all insurers, to protect the public from insurer insolvency and providing for assessment among association members under certain conditions.

40-5702. Purpose. The purpose of this act is to provide a mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders because of the insolvency of an insurer, to assist in the detection and prevention of insurer insolvencies, and to provide an association to assess the cost of such protection among insurers.

History: En. Sec. 2, Ch. 63, L. 1971.

40-5703. Scope. This act shall apply to all kinds of direct insurance, except life, title, surety, disability, credit, mortgage, guaranty and ocean marine insurance.

History: En. Sec. 3, Ch. 63, L. 1971.

40-5704. Construction. This act shall be liberally construed to effect the purpose under section 2 [40-5702] which shall constitute an aid and guide to interpretation.

History: En. Sec. 4, Ch. 63, L. 1971.

40-5705. Definitions. As used in this act, (1) "Association" means the Montana insurance guaranty association created under section 6 [40-5706] of this act.

(2) "Commissioner" means the commissioner of insurance of this state.

(3) "Covered claim" means an unpaid claim, including one for unearned premiums, which arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this act applies issued by an insurer, if such insurer becomes an insolvent insurer after the effective date of this act and (a) the claimant or insured is a resident of this state at the time of the insured event; or (b) the property from which the claim arises is permanently located in this state. "Covered claim" shall not include any amount due an reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise.

(4) "Insolvent insurer" means (a) an insurer authorized to transact insurance in this state either at the time the policy was issued or when the insured event occurred and (b) determined to be insolvent by a court of competent jurisdiction.

(5) "Member insurer" means any person who (a) writes any kind of insurance to which this act applies under section 3 [40-5703], including the exchange of reciprocal or interinsurance contracts, and (b) is licensed to transact insurance in this state.

(6) "Net direct written premiums" means direct gross premiums written in this state on insurance policies to which this act applies, less return premiums thereon and dividends paid or credited to policyholders on such direct business. "Net direct written premiums" does not include premiums on contracts between insurers or reinsurers.

(7) "Person" means any individual, corporation, partnership, association or voluntary organization.

History: En. Sec. 5, Ch. 63, L. 1971.

40-5706. Creation of the association. There is created a nonprofit unincorporated legal entity to be known as the Montana insurance guaranty association. All insurers defined as member insurers shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under a plan of operation established and approved under section 9 [40-5709] and shall exercise its powers through a board of directors established under section 7 [40-5707].

History: En. Sec. 6, Ch. 63, L. 1971.

40-5707. Board of directors. (1) The board of directors of the association shall consist of not less than five (5) nor more than nine (9) persons serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the commissioner. Vacancies on the board shall be filled for the remaining period of the term in the same manner as initial appointments. If no members are selected within sixty (60) days after the effective date of this act, the commissioner may appoint the initial members of the board of directors.

(2) In approving selections to the board, the commissioner shall consider among other things whether all member insurers are fairly represented.

(3) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors.

History: En. Sec. 7, Ch. 63, L. 1971.

40-5708. Powers and duties of the association. (1) The association shall:

(a) Be obligated to the extent of the covered claims existing prior to the determination of insolvency and arising within thirty (30) days after the determination of insolvency, or before the policy expiration date if less than thirty (30) days after the determination, or before the insured replaces the policy or causes its cancellation, if he does so within thirty (30) days of the determination, but such obligation shall include only that amount of each covered claim which is in excess of one hundred dollars (\$100) and is less than three hundred thousand [dollars] (\$300,000), except that the association shall pay the full amount of any covered claim arising out of a workmen's compensation policy. In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises.

(b) Be deemed the insurer to the extent of its obligation on the covered claims and to such extent shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent.

(c) Assess insurers amounts necessary to pay the obligations of the association under paragraph (a) subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, and the cost of examinations under section 13 [40-5713] and other expenses authorized by this act. The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the preceding calendar year bears to the net direct written premiums of all member insurers for the preceding calendar year. Each member insurer shall be notified of the assessment not later than thirty (30) days before it is due. No member insurer may be assessed in any year an amount greater than two per cent (2%) of that member insurer's net direct written premiums for the preceding calendar year. If the maximum assessment, together with the other assets of the association does not provide in any one (1) year an amount sufficient to make all necessary payments, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available. The association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. Each member insurer may set off against any assessment, authorized payments

made on covered claims and expenses incurred in the payment of such claims by the member insurer.

(d) Investigate claims brought against the association and adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims and may review settlements, releases and judgments to which the insolvent insurer or its insureds were parties to determine the extent to which such settlements, releases and judgments may be properly contested.

(e) Notify such persons as the commissioner directs under section 10 [40-5710] (2)(a).

(f) Handle claims through its employees or through one or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner, but such designation may be declined by a member insurer.

(g) Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and shall pay the other expenses of the association authorized by this act.

(2) The association may: (a) Employ or retain such persons as are necessary to handle claims and perform other duties of the association.

(b) Borrow funds necessary to effect the purposes of this act in accord with the plan of operation.

(c) Sue or be sued.

(d) Negotiate and become a party to such contracts as are necessary to carry out the purpose of this act.

(e) Perform such other acts as are necessary or proper to effectuate the purpose of this act.

(f) Refund to the member insurers in proportion to the contribution of each member insurer to the association that amount by which the assets of the association exceed the liabilities, if, at the end of any calendar year, the board of directors finds that the assets of the association exceed the liabilities of the association as estimated by the board of directors for the coming year.

History: En. Sec. 8, Ch. 63, L. 1971.

40-5709. Plan of operation. (1) (a) The association shall submit to the commissioner a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the commissioner.

(b) If the association fails to submit a suitable plan of operation within ninety (90) days following the effective date of this act or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this act. Such rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

(2) All member insurers shall comply with the plan of operation.

(3) The plan of operation shall: (a) Establish the procedures whereby all the powers and duties of the association under section 8 [40-5708] will be performed.

(b) Establish procedures for handling assets of the association.

(c) Establish the amount and method of reimbursing members of the board of directors under section 7 [40-5707].

(d) Establish procedures by which claims may be filed with the association and establish acceptable forms of proof of covered claims. Notice of claims to the receiver or liquidator of the insolvent insurer shall be deemed notice to the association or its agent and a list of such claims shall be periodically submitted to the association or similar organization in another state by the receiver or liquidator.

(e) Establish regular places and times for meetings of the board of directors.

(f) Establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors.

(g) Provide that any member insurer aggrieved by any final action or decision of the association may appeal to the commissioner within thirty (30) days after the action or decision.

(h) Establish the procedures whereby selections for the board of directors will be submitted to the commissioner.

(i) Contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(4) The plan of operation may provide that any or all powers and duties of the association, except those under section 8 [40-5708] (1)(c) and 8 [40-5708] (2)(b), are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association, or its equivalent, in two or more states. Such a corporation, association or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid for its performance of any other functions of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the commissioner, and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this act.

History: En. Sec. 9, Ch. 63, L. 1971.

40-5710. Duties and powers of the commissioner.

(1) The commissioner shall: (a) Notify the association of the existence of an insolvent insurer not later than three (3) days after he receives notice of the determination of the insolvency.

(b) Upon request of the board of directors, provide the association with a statement of the net direct written premiums of each member insurer.

(2) The commissioner may: (a) Require that the association notify the insureds of the insolvent insurer and any other interested parties of the determination of insolvency and of their rights under this act. Such notification shall be by mail at their last known address, where available, but if sufficient information for notification by mail is not available,

notice by publication in a newspaper of general circulation shall be sufficient.

(b) Suspend or revoke, after notice and hearing the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner may levy a fine on any member insurer which fails to pay an assessment when due. Such fine shall not exceed five per cent (5%) of the unpaid assessment per month, except that no fine shall be less than one hundred dollars (\$100) per month.

(c) Revoke the designation of any servicing facility if he finds claims are being handled unsatisfactorily.

(3) Any final action or order of the commissioner under this act shall be subject to judicial review in a court of competent jurisdiction.

History: En. Sec. 10, Ch. 63, L. 1971.

40-5711. Effect of paid claims. (1) Any person recovering under this act shall be deemed to have assigned his rights under the policy to the association to the extent of his recovery from the association. Every insured or claimant seeking the protection of this act shall co-operate with the association to the same extent as such person would have been required to co-operate with the insolvent insurer. The association shall have no cause of action against the insured of the insolvent insurer for any sums it has paid out except such causes of action as the insolvent insurer would have had if such sums had been paid by the insolvent insurer. In the case of an insolvent insurer operating on a plan with assessment liability, payments of claims of the association shall not operate to reduce the liability of insured's to the receiver, liquidator, or statutory successor for unpaid assessments.

(2) The receiver, liquidator, or statutory successor of an insolvent insurer shall be bound by settlements of covered claims by the association or a similar organization in another state. The court having jurisdiction shall grant such claims priority equal to that which the claimant would have been entitled in the absence of this act against the assets of the insolvent insurer. The expenses of the association or similar organization in handling claims shall be accorded the same priority as the liquidator's expenses.

(3) The association shall periodically file with the receiver or liquidator of the insolvent insurer statements of the covered claims paid by the association and estimates of anticipated claims on the association which shall preserve the rights of the association against the assets of the insolvent insurer.

History: En. Sec. 11, Ch. 63, L. 1971.

40-5712. Nonduplication of recovery. (1) Any person having a claim against an insurer under any provision in an insurance policy other than a policy of an insolvent insurer which is also a covered claim, shall be required to exhaust first his right under such policy. Any amount payable on a covered claim under this act shall be reduced by the amount of any recovery under such insurance policy.

(2) Any person having a claim which may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured except that if it is a first party claim for damage to property with a permanent location, he shall seek recovery first from the association of the location of the property, and if it is a workmen's compensation claim, he shall seek recovery first from the association of the residence of the claimant. Any recovery under this act shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent.

History: En. Sec. 12, Ch. 63, L. 1971.

40-5713. Prevention of insolvencies. (1) It shall be the duty of the board of directors, upon majority vote, to notify the commissioner of any information indicating any member insurer may be insolvent or in a financial condition hazardous to the policyholders or the public.

(2) The board of directors may, upon majority vote, request that the commissioner order an examination of any member insurer which the board in good faith believes may be in a financial condition hazardous to the policyholders or the public. Within thirty (30) days of the receipt of such request, the commissioner shall begin such examination. The examination may be conducted as a national association of insurance commissioners examination or may be conducted by such persons as the commissioner designates. The cost of such examination shall be paid by the association and the examination report shall be treated as are other examination reports. In no event shall such examination report be released to the board of directors prior to its release to the public, but this shall not preclude the commissioner from complying with subsection (3). The commissioner shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the commissioner but it shall not be open to public inspection prior to the release of the examination report to the public.

(3) It shall be the duty of the commissioner to report to the board of directors when he has reasonable cause to believe that any member insurer examined or being examined at the request of the board of directors may be insolvent or in a financial condition hazardous to the policyholders or the public.

(4) The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation or conservation of any member insurer. Such reports and recommendations shall not be considered public documents.

(5) The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer insolvencies.

(6) The board of directors shall, at the conclusion of any insurer insolvency in which the association was obligated to pay covered claims, prepare a report on the history and causes of such insolvency, based on

the information available to the association, and submit such report to the commissioner.

History: En. Sec. 13, Ch. 63, L. 1971.

40-5714. Examination of the association. The association shall be subject to examination and regulation by the commissioner. The board of directors shall submit, not later than March 30 of each year, a financial report for the preceding calendar year in a form approved by the commissioner.

History: En. Sec. 14, Ch. 63, L. 1971.

40-5715. Tax exemption. The association shall be exempt from payment of all fees and all taxes levied by this state or any of its subdivisions except taxes levied on real or personal property.

History: En. Sec. 15, Ch. 63, L. 1971.

40-5716. Recognition of assessments in rates. The rates and premiums charged for insurance policies to which this act applies shall include amounts sufficient to recoup a sum equal to the amounts paid to the association by the member insurer less any amounts returned to the member insurer by the association and such rates shall not be deemed excessive because they contain an amount reasonably calculated to recoup assessments paid by the member insurer.

History: En. Sec. 16, Ch. 63, L. 1971.

40-5717. Immunity. There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer, the association or its agents or employees, the board of directors, or the commissioner or his representatives for any action taken by them in the performance of their powers and duties under this act.

History: En. Sec. 17, Ch. 63, L. 1971.

40-5718. Stay of proceedings—reopening of default judgments. All proceedings in which the insolvent insurer is a party or is obligated to defend a party in any court in this state shall be stayed for sixty (60) days from the date the insolvency is determined to permit proper defense by the association of all pending causes of action. As to any covered claims arising from a judgment under any decision, verdict or finding based on the default of the insolvent insurer or its failure to defend an insured, the association either on its own behalf or on behalf of such insured may apply to have such judgment, order, decision, verdict or finding set aside by the same court or administrator that made such judgment, order, decision, verdict or finding and shall be permitted to defend against such claim on the merits.

History: En. Sec. 18, Ch. 63, L. 1971.

CHAPTER 58—LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION ACT

Section 40-5801.	Title.
40-5802.	Purpose.
40-5803.	Scope.

- 40-5804. Construction.
- 40-5805. Definitions.
- 40-5806. Creation of the association.
- 40-5807. Board of directors.
- 40-5808. Powers and duties of the association.
- 40-5809. Assessments.
- 40-5810. Plan of operation.
- 40-5811. Duties and powers of the commissioner.
- 40-5812. Prevention of impairments.
- 40-5813. Appointment of association nominee.
- 40-5814. Miscellaneous provisions.
- 40-5815. Examination of the association—annual report.
- 40-5816. Tax exemptions.
- 40-5817. Tax—writeoffs of certificates of contribution.
- 40-5818. Immunity.
- 40-5819. Stay of proceedings—reopening default judgments.

40-5801. Title. This act shall be known and may be cited as the Montana Life and Health Insurance Guaranty Association Act.

History: En. 40-5801 by Sec. 1, Ch. 245, L. 1974.

Title of Act

Montana Model Life and Health Insurance Guaranty Association Act.

40-5802. Purpose. The purpose of this act is to protect policyowners, insureds, beneficiaries, annuitants, payees, and assignees of life insurance policies, health insurance policies, annuity contracts, and supplemental contracts, subject to certain limitations, against failure in the performance of contractual obligations due to the impairment of the insurer issuing such policies or contracts. To provide this protection, (1) an association of insurers is created to enable the guaranty of payment of benefits and of continuation of coverages, (2) members of the association are subject to assessment to provide funds to carry out the purpose of this act, and (3) the association is authorized to assist the commissioner, in the prescribed manner, in the detection and prevention of insurer impairments.

History: En. 40-5802 by Sec. 2, Ch. 245, L. 1974.

40-5803. Scope. (1) This act shall apply to direct life insurance policies, health insurance policies, annuity contracts, and contracts supplemental to life and health insurance policies and annuity contracts issued by persons authorized to transact insurance in this state at any time.

(2) This act shall not apply to:

(a) any such policies or contracts, or any part of such policies or contracts, under which the risk is borne by the policyholder;

(b) any such policy or contract or part thereof assumed by the impaired insurer under a contract of reinsurance, other than reinsurance for which assumption certificates have been issued.

History: En. 40-5803 by Sec. 3, Ch. 245, L. 1974.

40-5804. Construction. This act shall be liberally construed to effect the purpose under section 2 [40-5802] which shall constitute an aid and guide to interpretation.

History: En. 40-5804 by Sec. 4, Ch. 245, L. 1974.

40-5805. Definitions.

As used in this act:

(1) "Account" means either of the three accounts created under section 6 [40-5806].

(2) "Association" means the Montana life and health insurance guaranty association created under section 6 [40-5806].

(3) "Commissioner" means the commissioner of insurance of this state.

(4) "Contractual obligation" means any obligation under covered policies.

(5) "Covered policy" means any policy or contract within the scope of this act under section 3 [40-5803].

(6) "Impaired insurer" means

(a) an insurer which after the effective date of this act, becomes insolvent and is placed under a final order of liquidation, rehabilitation, or conservation by a court of competent jurisdiction, or

(b) an insurer deemed by the commissioner after the effective date of this act to be unable or potentially unable to fulfill its contractual obligations.

(7) "Member insurer" means any person authorized to transact in this state any kind of insurance to which this act applies under section 3 [40-5803].

(8) "Premiums" means direct gross insurance premiums and annuity considerations written on covered policies, less return premiums and considerations thereon and dividends paid or credited to policyholders on such direct business. "Premiums" do not include premiums and considerations on contracts between insurers and reinsurers. As used in section 9 [40-5809] "premiums" are those for the calendar year preceding the determination of impairment.

(9) "Person" means any individual, corporation, partnership, association or voluntary organization.

(10) "Resident" means any person who resides in this state at the time the impairment is determined and to whom contractual obligations are owed.

History: En. 40-5805 by Sec. 5, Ch. 245,
L. 1974.

40-5806. Creation of the association. (1) There is created a non-profit legal entity to be known as the Montana life and health insurance guaranty association. All member insurers shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under the plan of operation established and approved under section 10 [40-5810] and shall exercise its powers through a board of directors established under section 7 [40-5807]. For purposes of administration and assessment, the association shall maintain three accounts:

(a) the health insurance account;

(b) the life insurance account; and

(c) the annuity account.

(2) The association shall come under the immediate supervision of the commissioner and shall be subject to the applicable provisions of the insurance laws of this state.

History: En. 40-5806 by Sec. 6, Ch. 245, L. 1974.

40-5807. Board of directors. (1) The board of directors of the association shall consist of five (5) members serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the commissioner. Vacancies on the board shall be filled for the remaining period of the term in the manner described in the plan of operation. To select the initial board of directors, and initially organize the association, the commissioner shall give notice to all member insurers of the time and place of the organizational meeting. In determining voting rights at the organizational meeting each member insurer shall be entitled to one (1) vote in person or by proxy. If the board of directors is not selected within sixty (60) days after notice of the organizational meeting, the commissioner may appoint the initial members.

(2) In approving selections or in appointing members to the board, the commissioner shall consider, among other things, whether all member insurers are fairly represented.

(3) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors but members of the board shall not otherwise be compensated by the association for their services.

History: En. 40-5807 by Sec. 7, Ch. 245, L. 1974.

40-5808. Powers and duties of the association. In addition to the powers and duties enumerated in other sections of this act,

(1) If a domestic insurer is an impaired insurer, the association may, prior to an order of liquidation or rehabilitation, and subject to any conditions imposed by the association other than those which impair the contractual obligations of the impaired insurer, and approved by the impaired insurer and the commissioner:

(a) guarantee or reinsure, or cause to be guaranteed, assumed, or re-insured, all the covered policies of the impaired insurer;

(b) provide such moneys, pledges, notes, guarantees, or other means as are proper to effectuate [subdivision (a) of this subsection], and assure payment of the contractual obligations of the impaired insurer pending action under [subdivision (a) of this subsection];

(c) loan money to the impaired insurer.

(2) If a foreign or alien insurer is an impaired insurer, the association may, prior to an order of liquidation, rehabilitation, or conservation, with respect to the covered policies of residents and subject to any conditions imposed by the association other than those which impair the contractual

obligations of the impaired insurer, and approved by the impaired insurer and the commissioner:

(a) guarantee or reinsure, or cause to be guaranteed, assumed, or reinsured, the impaired insurer's covered policies of residents;

(b) provide such moneys, pledges, notes, guarantees or other means as are proper to effectuate [subdivision (a) of this subsection], and assure payment of the impaired insurer's contractual obligations to residents pending action under [subdivision (a) of this subsection];

(c) loan money to the impaired insurer.

(3) If a domestic insurer is an impaired insurer under an order of liquidation or rehabilitation, the association shall, subject to the approval of the commissioner:

(a) guarantee, assume, or reinsure, or cause to be guaranteed, assumed or reinsured the covered policies of the impaired insurer;

(b) assure payment of the contractual obligations of the impaired insurer; and

(c) provide such moneys, pledges, notes, guarantees, or other means as are reasonably necessary to discharge such duties.

If the association fails to act within a reasonable period of time, the commissioner shall have the powers and duties of the association under this act with respect to such domestic impaired insurer.

(4) If a foreign or alien insurer is an impaired insurer under an order of liquidation, rehabilitation, or conservation, the association shall subject to the approval of the commissioner:

(a) guarantee, assume, or reinsure or cause to be guaranteed, assumed, or reinsured the covered policies of residents;

(b) assure payment of the contractual obligations of the impaired insurer to residents; and

(c) provide such moneys, pledges, notes, guarantees, or other means as are reasonably necessary to discharge such duties.

If the association fails to act within a reasonable period of time, the commissioner shall have the powers and duties of the association under this act with respect to such foreign or alien impaired insurer.

(5) (a) In carrying out its duties under subsections (3) and (4), the association may request that there be imposed policy liens, contract liens, moratoriums on payments, or other similar means and such liens, moratoriums, or similar means may be imposed if the commissioner:

(i) finds that the amounts which can be assessed under this act are less than the amounts needed to assure full and prompt performance of the impaired insurer's contractual obligations, or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of policy or contract liens, moratoriums, or similar means to be in the public interest, and

(ii) approve the specific policy liens, contract liens, moratoriums, or similar means to be used.

(b) Before being obligated under subsections (3) and (4) the association may request that there be imposed temporary moratoriums or liens on payments of cash values and policy loans and such temporary

moratoriums and liens may be imposed if they are approved by the commissioner.

(6) The association shall have no liability under this section for any covered policy of a foreign or alien insurer whose domiciliary jurisdiction or state of entry provides by statute or regulation, for residents of this state protection substantially similar to that provided by this act for residents of other states.

(7) The association may render assistance and advice to the commissioner, upon his request, concerning rehabilitation, payment of claims, continuations of coverage, or the performance of other contractual obligations of any impaired insurer.

(8) The association shall have standing to appear before any court in this state with jurisdiction over an impaired insurer concerning which the association is or may become obligated under this act. Such standing shall extend to all matters germane to the powers and duties of the association, including, but not limited to, proposals for reinsuring or guaranteeing the covered policies of the impaired insurer and the determination of the covered policies and contractual obligations.

(9) (a) Any person receiving benefits under this act shall be deemed to have assigned his rights under the covered policy to the association to the extent of the benefits received because of this act whether the benefits are payments of contractual obligations or continuation of coverage. The association may require an assignment to it of such rights by any payee, policy or contract owner, beneficiary, insured or annuitant as a condition precedent to the receipt of any rights or benefits conferred by this act upon such person. The association shall be subrogated to these rights against the assets of any impaired insurer.

(b) The subrogation rights of the association under this subsection shall have the same priority against the assets of the impaired insurer as that possessed by the person entitled to receive benefits under this act.

(10) The contractual obligations of the impaired insurer for which the association becomes or may become liable shall be as great as but no greater than the contractual obligations of the impaired insurer would have been in the absence of an impairment unless such obligations are reduced as permitted by subsection (5) but the association shall have no liability with respect to any portion of a covered policy to the extent that the death benefit coverage on any one life exceeds an aggregate of three hundred thousand dollars (\$300,000).

(11) The association may:

(a) enter into such contracts as are necessary or proper to carry out the provisions and purposes of this act;

(b) sue or be sued, including taking any legal actions necessary or proper for recovery of any unpaid assessments under section 9 [40-5809];

(c) borrow money to effect the purposes of this act. Any notes or other evidence of indebtedness of the association not in default shall be legal investments for domestic insurers and may be carried as admitted assets;

(d) employ or retain such persons as are necessary to handle the financial transactions of the association, and to perform such other functions as become necessary or proper under this act;

(e) negotiate and contract with any liquidator, rehabilitator, conservator, or ancillary receiver to carry out the powers and duties of the association;

(f) take such legal action as may be necessary to avoid payment of improper claims;

(g) exercise, for the purposes of this act and to the extent approved by the commissioner, the powers of a domestic life or health insurer, but in no case may the association issue insurance policies or annuity contracts other than those issued to perform the contractual obligations of the impaired insurer.

History: En. 40-5808 by Sec. 8, Ch. 245, L. 1974.

40-5809. Assessments. (1) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account, at such times and for such amounts as the board finds necessary. The board shall collect the assessments after thirty (30) days' written notice to the member insurers before payment is due.

(2) There shall be three classes of assessments, as follows:

(a) Class A assessments shall be made for the purpose of meeting administrative costs and other general expenses not related to a particular impaired insurer.

(b) Class B assessments shall be made to the extent necessary to carry out the powers and duties of the association under section 8 [40-5808] with regard to an impaired domestic insurer.

(c) Class C assessments shall be made to the extent necessary to carry out the powers and duties of the association under section 8 [40-5808] with regard to an impaired foreign or alien insurer.

(3) (a) The amount of any Class A assessment for each account shall be determined by the board. The amount of any Class B or C assessment shall be divided among the accounts in the proportion that the premiums received by the impaired insurer on the policies covered by each account bears to the premiums received by such insurer on all covered policies.

(b) Class A and Class C assessments against member insurers for each account shall be in the proportion that the premiums received on business in this state by each assessed member insurer on policies covered by each account bears to such premiums received on business in this state by all assessed member insurers.

(c) Class B assessments for each account shall be made separately for each state in which the impaired domestic insurer was authorized to transact insurance at any time, in the proportion that the premiums received on business in such state by the impaired insurer on policies covered by such account bears to such premiums received in all such states by the

impaired insurer. The assessments against member insurers shall be in the proportion that the premiums received on business in each such state by each assessed member insurer on policies covered by each account bears to such premiums received on business in each state by all assessed member insurers.

(d) Assessments for funds to meet the requirements of the association with respect to an impaired insurer shall not be made until necessary to implement the purposes of this act. Classification of assessments under subsection (2) and computation of assessments under this subsection shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

(4) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. The total of all assessments upon a member insurer for each account shall not in any one (1) calendar year exceed two per cent (2%) of such insurer's premiums in this state on the policies covered by the account.

(5) In the event an assessment against a member insurer is abated, or deferred, in whole or in part, because of the limitations set forth in subsection (4), the amount by which such assessment is abated or deferred, shall be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. If the maximum assessment, together with the other assets of the association in either account, does not provide in any one (1) year in either account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed as soon thereafter as permitted by this act.

(6) The board may, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each insurer to that account, the amount by which the assets of the account exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to that amount, including assets accruing from net realized gains and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future losses if refunds are impractical.

(7) It shall be proper for any member insurer, in determining its premium rates and policyowner dividends as to any kind of insurance within the scope of this act, to consider the amount reasonably necessary to meet its assessment obligations under this act.

(8) The association shall issue to each insurer paying an assessment under this act a certificate of contribution, in a form prescribed by the commissioner, for the amount so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in such form and for such amount, if any, and period of time as the commissioner may approve.

History: En. 40-5809 by Sec. 9, Ch. 245, L. 1974.

40-5810. Plan of operation. (1) (a) The association shall submit to the commissioner a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the commissioner.

(b) If the association fails to submit a suitable plan of operation within one hundred eighty (180) days following the effective date of this act or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this act. Such rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

(2) All member insurers shall comply with the plan of operation.

(3) The plan of operation shall, in addition to requirements enumerated elsewhere in this act:

(a) establish procedures for handling the assets of the association;

(b) establish the amount and method of reimbursing members of the board of directors under section 7, [40-5807];

(c) establish regular places and times for meetings of the board of directors;

(d) establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors;

(e) establish the procedures whereby selections for the board of directors will be made and submitted to the commissioner;

(f) establish any additional procedures for assessments under section 9 [40-5809];

(g) contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(4) The plan of operation may provide that any or all powers and duties of the association, except those under sections 8 (11) (c) [40-5808 (11) (c)] and 9 [40-5809], are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association, or its equivalent, in two (2) or more states. Such a corporation, association, or organization shall be reimbursed for any payments made on behalf of the association and shall be paid for its performance of any function of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the commissioner, and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this act.

History: En. 40-5810 by Sec. 10, Ch. 245, L. 1974.

40-5811. Duties and powers of the commissioner. (1) In addition to the duties and powers enumerated elsewhere in this act, the commissioner shall:

(a) notify the board of directors of the existence of an impaired insurer not later than three (3) days after a determination of impairment is made or he receives notice of impairment;

(b) upon request of the board of directors, provide the association with a statement of the premiums in the appropriate states for each member insurer;

(c) when an impairment is declared and the amount of the impairment is determined, serve a demand upon the impaired insurer to make good the impairment within a reasonable time. Notice to the impaired insurer shall constitute notice to its shareholders, if any. The failure of the insurer to promptly comply with such demand shall not excuse the association from the performance of its powers and duties under this act;

(d) in any liquidation or rehabilitation proceeding involving a domestic insurer, be appointed as the liquidator or rehabilitator. If a foreign or alien member insurer is subject to a liquidation proceeding in its domiciliary jurisdiction or state of entry, the commissioner shall be appointed conservator.

(2) The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative the commissioner may levy a forfeiture on any member insurer which fails to pay an assessment when due. Such forfeiture shall not exceed five per cent (5%) of the unpaid assessment per month, but no forfeiture shall be less than one hundred dollars (\$100) per month.

(3) Any action of the board of directors or the association may be appealed to the commissioner by any member insurer if such appeal is taken within thirty (30) days of the action being appealed. Any final action or order of the commissioner shall be subject to judicial review in a court of competent jurisdiction.

(4) The liquidator, rehabilitator, or conservator of any impaired insurer may notify all interested persons of the effect of this act.

History: En. 40-5811 by Sec. 11, Ch. 245, L. 1974.

40-5812. Prevention of impairments. To aid in the detection and prevention of insurer impairments:

(1) The board of directors shall, upon majority vote, notify the commissioner of any information indicating any member insurer may be unable or potentially unable to fulfill its contractual obligations.

(2) The board of directors may, upon majority vote, request that the commissioner order an examination of any member insurer which the board in good faith believes may be unable or potentially unable to fulfill its contractual obligations. The commissioner may conduct such examination. The examination may be conducted as a national association of insurance commissioners examination or may be conducted by such persons as the commissioner designates. The cost of such examination shall be paid by the association and the examination report shall be

treated as are other examination reports. In no event shall such examination report be released to the board of directors of the association prior to its release to the public, but this shall not excuse the commissioner from his obligation to comply with subsection (3). The commissioner shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the commissioner but it shall not be open to public inspection prior to the release of the examination report to the public and shall be released at that time only if the examination discloses that the examined insurer is unable or potentially unable to meet its contractual obligations.

(3) The commissioner shall report to the board of directors when he has reasonable cause to believe that any member insurer examined at the request of the board of directors may be unable or potentially unable to fulfill its contractual obligations.

(4) The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation or conservation of any member insurer. Such reports and recommendations shall not be considered public documents.

(5) The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer impairments.

(6) The board of directors shall, at the conclusion of any insurer impairment in which the association carried out its duties under this act or exercised any of its powers under this act, prepare a report on the history and causes of such impairment, based on the information available to the association, and submit such report to the commissioner.

History: En. 40-5812 by Sec. 12, Ch. 245, L. 1974.

40-5813. Appointment of association nominee. The association may recommend a natural person to serve as a special deputy to act for the commissioner and under his supervision in the liquidation, rehabilitation, or conservation, of any member insurer.

History: En. 40-5813 by Sec. 13, Ch. 245, L. 1974.

40-5814. Miscellaneous provisions. (1) Nothing in this act shall be construed to reduce the liability for unpaid assessments of the insureds of an impaired insurer operating under a plan with assessment liability.

(2) Records shall be kept of all negotiations and meetings in which the association or its representatives are involved to discuss the activities of the association in carrying out its powers and duties under section 8 [40-5808]. Records of such negotiations or meetings shall be made public only upon the termination of a liquidation, rehabilitation, or conservation proceeding involving the impaired insurer, upon the termination of the impairment of the insurer, or upon the order of a court of competent jurisdiction. Nothing in this subsection shall limit the duty of the association to render a report of its activities under section 15 [40-5815].

(3) For the purpose of carrying out its obligations under this act, the association shall be deemed to be a creditor of the impaired insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled as subrogee pursuant to section 8(9) [40-5808(9)]. All assets of the impaired insurer attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the impaired insurer as required by this act. Assets attributable to covered policies, as used in this subsection, is that proportion of the assets which the reserves that should have been established for such policies bear to the reserve that should have been established for all policies of insurance written by the impaired insurer.

(4) (a) Prior to the termination of any liquidation, rehabilitation, or conservation proceeding, the court may take into consideration the contributions of the respective parties, including the association, the shareholders and policyowners of the impaired insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of such impaired insurer. In such a determination, consideration shall be given to the welfare of the policyholders of the continuing or successor insurer.

(b) No distribution to stockholders, if any, of an impaired insurer shall be made until and unless the total amount of assessments levied by the association with respect to such insurer have been fully recovered by the association.

(5) It shall be a prohibited unfair trade practice for any person to make use in any manner of the protection afforded by this act in the sale of insurance.

(6) (a) If an order for liquidation or rehabilitation of an insurer domiciled in this state has been entered, the receiver appointed under such order shall have a right to recover on behalf of the insurer, from any affiliate that controlled it, the amount of distributions, other than stock dividends paid by the insurer on its capital stock, made at any time during the five years preceding the petition for liquidation or rehabilitation subject to the limitations of paragraphs (b) to (d).

(b) No such dividend shall be recoverable if the insurer shows that when paid the distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(c) Any person who as an affiliate that controlled the insurer at the time the distributions were paid shall be liable up to the amount of distributions he received. Any person who was an affiliate that controlled the insurer at the time the distributions were declared, shall be liable up to the amount of distributions he would have received if they had been paid immediately. If two persons are liable with respect to the same distributions, they shall be jointly and severally liable.

(d) The maximum amount recoverable under this subsection shall be the amount needed in excess of all other available assets of the impaired insurer to pay the contractual obligations of the impaired insurer.

(e) If any person liable under paragraph (c) is insolvent, all its affiliates that controlled it at the time the dividend was paid, shall be jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate.

History: En. 40-5814 by Sec. 14, Ch. 245, L. 1974.

40-5815. Examination of the association—annual report. The association shall be subject to examination and regulation by the commissioner. The board of directors shall submit to the commissioner, not later than May 1 of each year, a financial report for the preceding calendar year in a form approved by the commissioner and a report of its activities during the preceding calendar year.

History: En. 40-5815 by Sec. 15, Ch. 245, L. 1974.

40-5816. Tax exemptions. The association shall be exempt from payment of all fees and all taxes levied by this state or any of its subdivisions, except taxes levied on real property.

History: En. 40-5816 by Sec. 16, Ch. 245, L. 1974.

40-5817. Tax—writeoffs of certificates of contribution. (1) Unless a longer period has been allowed by the commissioner, a member insurer shall at its option have the right to show a certificate of contribution as an asset in the form approved by the commissioner pursuant to section 9 (8) [40-5809(8)], at percentages of the original face amount approved by the commissioner, for calendar years as follows:

One hundred per cent (100%) for calendar year of issuance, eighty per cent (80%) for the first calendar year after year of issuance, sixty per cent (60%) for second calendar year after year of issuance, forty per cent (40%) for third calendar year after year of issuance, twenty per cent (20%) for fourth calendar year after year of issuance.

(2) The insurer may offset the amount written off by it in the calendar year under subsection (1) above, against its premium tax liability to this state accrued with respect to business transacted in such year.

(3) Any sums acquired by refund, pursuant to section 9 (6) [40-5809(6)], from the association which have therefore been written off by contributing insurers and offset against premium taxes as provided in subsection (2) above, and is not then needed for purposes for this act, shall be paid by the association to the commissioner and by him deposited with the state treasurer for credit to the general fund of this state.

History: En. 40-5817 by Sec. 17, Ch. 245, L. 1974.

40-5818. Immunity. There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer or its agents or employees, the association or its agents or employees, members of the board of directors, or the commissioner or his representa-

tives, for any action taken by them in the performance of their powers and duties under this act.

History: En. 40-5818 by Sec. 18, Ch. 245, L. 1974.

40-5819. Stay of proceedings—reopening default judgments. All proceedings in which the impaired insurer is a party in any court in this state shall be stayed sixty (60) days from the date an order of liquidation, rehabilitation, or conservation is final to permit proper legal action by the association on any matters germane to its powers or duties. As to a judgment under any decision, order, verdict, or finding based on default the association may apply to have such judgment set aside by the same court that made such judgment and shall be permitted to defend against such suit on the merits.

History: En. 40-5819 by Sec. 19, Ch. 245, L. 1974.

CHAPTER 59—HEALTH SERVICE CORPORATIONS

- Section 40-5901. Definitions.
40-5902. Application of this act—construction of other related laws.
40-5903. Purposes of health service corporation.
40-5904. No profit organization may be a health service corporation.
40-5905. Financial security.
40-5906. Forms—filing.
40-5907. Allowed contracts.
40-5908. Enrollment representative.
40-5909. Enrollment representative—filing with commissioner—license.
40-5910. Licenses—refusal to issue—suspension—revocation.
40-5911. Annual report.
40-5912. Examination of a health service corporation.
40-5913. Grievance procedure.
40-5914. Nonliability.
40-5915. Premium tax exemption.
40-5916. Montana Administrative Procedure Act applicable.
40-5917. Fees.
40-5918. Trade practices prohibited.
40-5919. Certain exclusions.
40-5920. Notice of violation.
40-5921. Cease and desist order.
40-5922. Injunctive relief.
40-5923. Grace period.

40-5901. Definitions. As used in this act:

(1) "Health service corporation" means a nonprofit corporation organized or operating for the purposes of establishing and operating a nonprofit plan or plans under which prepaid hospital care, medical-surgical care and other health care and services, or reimbursement therefor, may be furnished to a member or beneficiary;

(2) "Health services" means the health care and services provided by hospitals, or other health care institutions, organizations, associations or groups, and by doctors of medicine, osteopathy, dentistry, chiropractic, optometry and podiatry, nursing services, medical appliances, equipment and supplies, drugs, medicines, ambulance services, and other therapeutic services and supplies;

(3) "Membership contract" means any agreement, contract or certificate by which a health service corporation describes the health services or benefits provided to its members or beneficiaries;

(4) "Commissioner" means the commissioner of insurance of the state of Montana.

History: En. 40-5901 by Sec. 1, Ch. 319, L. 1975.

Title of Act

An act to provide for the regulation of nonprofit health service corporations; and amending section 15-2304, R. C. M. 1947.

40-5902. Application of this act—construction of other related laws.

(1) All health service corporations heretofore or hereafter organized are subject to the provisions of this act.

(2) A law of this state other than the provisions of this act applicable to health service corporations shall be construed in accordance with the fundamental nature of a health service corporation, and in the event of a conflict between that law and the provisions of this act, the latter shall prevail.

History: En. 40-5902 by Sec. 2, Ch. 319, L. 1975.

40-5903. Purposes of health service corporation. A health service corporation may be organized for the purposes of:

(1) establishing and operating a voluntary, nonprofit plan or plans under which health services, or reimbursement therefor, are furnished to persons who become members or beneficiaries; or

(2) acting as agent or intermediary for other health service corporations, for governmental body or agency, or for other corporations, associations, partnerships or individuals in the field of health care and services; and

(3) research, education or related activity to further objects within the purview of this act.

History: En. 40-5903 by Sec. 3, Ch. 319, L. 1975.

40-5904. No profit organization may be a health service corporation. No group, association, or organization created for or engaged in business or activity for profit, provision for the incorporation of which is made by any of the corporation laws of this state, may be organized or operated, directly or indirectly, as a health service corporation under this act.

History: En. 40-5904 by Sec. 4, Ch. 319, L. 1975.

40-5905. Financial security. (1) The corporation shall maintain at all times, unobligated funds adequate to:

(a) provide the hospital, medical-surgical and other health services made available to its members and beneficiaries, and

(b) meet all costs and expenses.

(2) In addition, reserves of a health service corporation in cash, certificates of deposit, obligations issued or guaranteed by the government of the United States or other assets approved by the commissioner shall be maintained in an amount not less than:

(a) five hundred thousand dollars (\$500,000); or

(b) an amount equal to one (1) month's average income from dues or fees paid to the corporation by its members or beneficiaries, based on an average of the preceding twelve (12) months, whichever is less.

If the reserves are not equal to the average in (2)(b), they must have been increased during the preceding twelve (12) months by an amount equal to one per cent (1%) of the gross dues or fee income during that period. The determination of minimum reserves is subject, as to amounts payable to participating providers of the health services, to any right of the corporation to prorate the amounts under the terms of its health service contracts with providers. The commissioner may decrease or suspend the requirements of this section if he finds that the action is in the best interest of the members of the corporation.

History: En. 40-5905 by Sec. 5, Ch. 319, L. 1975.

40-5906. Forms—filing. (1) A copy of all forms of the membership contract or any type of endorsement or rider shall be filed with the commissioner within thirty (30) days after that form is first used. When a form does not comply with the requirements of this act, the commissioner shall notify the corporation in writing of that failure and include the reasons for his opinion. Unless the corporation requests a hearing within ten (10) days, notice by the commissioner disallows use of this form by the corporation. If the corporation challenges the commissioner's disallowance of a form it shall request a hearing on that issue. The commissioner shall schedule a hearing as soon as practicable but not less than fifteen (15) days from the date of the request. If the commissioner finds, after the hearing, that the form is not in compliance with this act he may disapprove the form and issue a final order to that effect. Notice of disapproval, including the grounds for disapproval, shall be presented to the corporation not less than thirty (30) days after the hearing. The final order is effective thirty (30) days after the hearing.

(2) A corporation whose forms have been ordered discontinued by the commissioner, may appeal, within fifteen (15) days after an order, to a district court of the state. The court, upon filing of the proper petition, shall cause the forms and orders of the commissioner to be brought before it, and upon hearing of the case, the court shall either affirm, or reverse and vacate the order of the commissioner.

(3) The court may suspend or stay a final order of the commissioner under this section, pending trial of the issues or the appeal.

History: En. 40-5906 by Sec. 6, Ch. 319, L. 1975.

40-5907. Allowed contracts. A corporation subject to the provisions of this act may enter into contracts for the rendering of health services on behalf of its members or beneficiaries with:

- (1) hospitals maintained by a governmental body or agency, or
- (2) hospitals maintained by a nonprofit corporation organized for hospital purposes, or
- (3) with other corporations, organizations, associations, partnerships, or individuals furnishing health services.

A health service corporation may enter into agreements or contracts with other organizations or corporations licensed to do business in this state or in any other state for:

- (1) the transfer of members or beneficiaries,
- (2) the reciprocal joint provisions of benefits to the members or beneficiaries of the corporation and of those other organizations or corporations, or
- (3) other joint undertakings the corporation's board of directors approves.

History: En. 40-5907 by Sec. 7, Ch. 319, L. 1975.

40-5908. Enrollment representative. (1) A person who, for compensation, solicits membership in a prepayment health service plan offered by a corporation subject to the provisions of this act, is an enrollment representative of that corporation.

(2) The definitions of enrollment representative as defined in this act do not include:

- (a) an individual employed and used by enrollment representatives for the performance of clerical, stenographic and similar office duties;
- (b) an individual employed and used for incidental taking of an application for coverage from time to time in the office of the employing enrollment representative;
- (c) an individual who secures and forwards information for the purpose of an existing group contractor for enrolling individuals under an existing group contract.

History: En. 40-5908 by Sec. 8, Ch. 319, L. 1975.

40-5909. Enrollment representative—filing with commissioner—license. (1) Each corporation subject to the provisions of this chapter shall notify the commissioner through its proper officer or agent of the name, title and address of each person it desires appointed as an enrollment representative. The notice shall be accompanied by a written application, upon a form furnished by the commissioner, from the appointee. If, upon receipt of this written notice, when accompanied by the proper fee, it appears that:

- (a) the appointee is a competent and suitable person who intends to hold himself out in good faith as the corporation's enrollment representative, and
- (b) he qualifies under the provisions of this section, the commissioner shall issue to that appointee a license which states that the person named is a constituted enrollment representative of the corporation in this state.

(2) For appointees who have not acted as an enrollment representative for a health service corporation for a period of two (2) years prior to the effective date of this act, if he considers it desirable, the commissioner may, require an appointee to submit to an examination to determine the qualifications of the appointee to act as an enrollment representative in this state. This examination shall inquire into an applicant's knowledge of the provisions of this chapter and of the forms submitted and utilized by the employing corporation.

(3) Upon receipt by the commissioner of notification from a health service corporation that the corporation desires a particular individual to be appointed as its enrollment representative, that person has a temporary enrollment representative's license until the commissioner notifies the corporation of action taken upon the application. If the commissioner rejects the application, the prospective appointee's eligibility to act as an enrollment representative ceases on the day the corporation is notified of rejection.

History: En. 40-5909 by Sec. 9, Ch. 319, L. 1975.

40-5910. Licenses—refusal to issue—suspension—revocation. (1) If for cause shown, and after a hearing or examination the commissioner determines a person is unsuitable to act as an enrollment representative, he shall:

- (a) refuse to issue a license, or
- (b) revoke a license previously issued, and
- (c) notify in writing both the appointee and the corporation of refusal.

(2) Unless revoked by the commissioner or unless the corporation by written notification to the commissioner cancels the authority of an enrollment representative to act for it, a license issued or a renewal thereof expires on January 1 after its issuance. A license may be renewed annually upon payment of the annual license renewal fee as prescribed in section 40-5917.

(3) The commissioner may suspend, for not more than twelve (12) months, or revoke or refuse to continue any license issued under this act if he finds that as to the licensee any one or more of the following causes exists:

- (a) any cause for which issuance of the license could have been refused had it then existed and been known to the commissioner;
- (b) obtaining or attempting to obtain a license through misrepresentation or fraud;
- (c) violation of or noncompliance with applicable provisions of this chapter, or willful violation of any lawful rule, or order of the commissioner;
- (d) misappropriation or conversion to his own use, or illegal withholding, moneys or property belonging to the health service corporation, its members, beneficiaries, or others and received in conduct of business under the license;

- (e) conviction of a felony involving moral turpitude;
- (f) fraudulent or dishonest practices, in the conduct of his affairs under the license, or
- (g) incompetence, untrustworthiness, or injury and loss to the public while acting under the license.

(4) The action taken under subsection (3) shall be the result of a hearing granted the licensee with twenty (20) days' notice. The notice and the reasons for the commissioner's action shall be by certified mail to the licensee and the corporation.

History: En. 40-5910 by Sec. 10, Ch. 319, L. 1975.

40-5911. Annual report. All corporations subject to the provisions of this act shall make and file annually with the commissioner, on or before March 1 of each year, a report under oath setting forth:

- (1) the name of the corporation;
- (2) the address of its registered office in this state and the name of its registered agent at that address;
- (3) the names and addresses of its directors and officers;
- (4) a brief statement of the character of the affairs which the corporation is actually conducting;
- (5) the amount of all dues or fees collected from members in the last fiscal year, the amounts actually paid during that year for health services for the members or beneficiaries, and the amounts placed in reserves;
- (6) a balance sheet and statement of income and expenditures for the most recent fiscal year of the corporation, prepared and verified by two officers of the corporation and certified by a certified public accountant;
- (7) a statement of any other facts or information concerning the financial affairs of the health service corporation which may be reasonably required by the commissioner.

History: En. 40-5911 by Sec. 11, Ch. 319, L. 1975.

40-5912. Examination of a health service corporation. (1) If the commissioner believes a health service corporation is unable or potentially unable to fulfill its contractual obligations to its members, the commissioner may conduct an examination of that corporation.

(2) Each health service corporation examined, its officers, employees, and agents shall produce and make available to the commissioner or his examiners the accounts, records, documents, files, information, assets and matters in his possession or control relating to the subject of the examination.

(3) The commissioner or his examiner shall make a verified report of the examination.

(4) The report shall comprise only facts appearing from the books, papers, records, or documents of the corporation examined, or ascertained from the testimony, under oath, of individuals concerning its affairs, and conclusions and recommendations as warranted by those facts.

(5) The commissioner shall furnish a copy of the proposed report to the corporation examined not less than twenty (20) days prior to its filing in his office. If the corporation requests a hearing, in writing, within the twenty (20) day period, the commissioner shall grant one with respect to the report, and shall not file the report until after the hearing and after modifications, if any, the commissioner deems proper.

History: En. 40-5912 by Sec. 12, Ch. 319, L. 1975.

40-5913. Grievance procedure. Any individual member of a corporation, subject to the provisions of this act, who believes himself to be aggrieved by any act or omission of the corporation or its officers, directors, or employees, may file a statement in writing of his grievance in the office of the commissioner, and the commissioner may investigate the grievance. No investigation by the commissioner shall act as a bar to any suit in a court of competent jurisdiction instituted by an aggrieved member, or as a bar to any defense by the involved corporation.

History: En. 40-5913 by Sec. 13, Ch. 319, L. 1975.

40-5914. Nonliability. A health service corporation is not liable for injuries resulting from neglect, misfeasance, malfeasance or malpractice on the part of any person, organization, agency or corporation, rendering health services to the health service corporation's members and beneficiaries.

History: En. 40-5914 by Sec. 14, Ch. 319, L. 1975.

40-5915. Premium tax exemption. A health service corporation is exempt from all premium taxes.

History: En. 40-5915 by Sec. 15, Ch. 319, L. 1975.

40-5916. Montana Administrative Procedure Act applicable. All final administrative actions or decisions of the commissioner under this act are subject to judicial review under and in accordance with the Montana Administrative Procedure Act.

History: En. 40-5916 by Sec. 16, Ch. 319, L. 1975.

40-5917. Fees. Every health service corporation subject to the provisions of this act shall pay the following fees to the commissioner of insurance for enforcement of the provisions of this chapter:

- (1) Enrollment representative's license:
 - (a) application for original license including examination and issuance of license ----- \$10
 - (b) annual renewal ----- \$ 5
- (2) Filing any other statement or report ----- \$ 1
- (3) For a certified copy of any document or other paper filed in the office of the commissioner, per page ----- .50

- (4) For the certificate and for affixing the seal thereto ----- \$ 1
- (5) Filing of a membership contract ----- \$10
- (6) Filing of a membership contract package ----- \$25
- (7) Filing annual report, a fee of twenty cents (.20) for each individual or family unit the corporation covered at the close of the year to which the annual report is applicable; except that the minimum fee payable upon filing of an annual report is one hundred dollars (\$100).

The commissioner shall promptly deposit with the state treasurer to the credit of the general fund all fees and license fees received by him under this section.

History: En. 40-5917 by Sec. 17, Ch. 319, L. 1975.

40-5918. Trade practices prohibited. In order to regulate trade practices of health service corporations the following practices are prohibited:

(1) No person may make, issue, circulate or cause to be made, issued or circulated any estimate, circular, or statement misrepresenting:

(a) the terms of any health service corporation membership contract issued or to be issued; or

(b) the benefits or advantages promised thereby; or make any misleading representation or any misrepresentation as to the financial condition of any health service corporation.

(2) No person may make, publish, disseminate, circulate, or place before the public, or cause directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation or statement with respect to the business of a health service corporation which is untrue, deceptive or misleading.

(3) No person may make or issue or cause to be made or issued any written or oral statement misrepresenting or making incomplete comparisons as to the terms, conditions, or benefits contained in any health service corporation membership contract for the purpose of inducing or attempting or tending to induce a member to cancel or convert any membership contract.

(4) No person may file with any public official, or make, publish, disseminate, circulate or deliver to any person, or place before the public, or cause directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement of financial condition of a health service corporation with intent to deceive.

(5) No person may make any false entry in any book, report or statement of any health service corporation with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to whom that health service corporation is required by law to report, or who has authority by law to examine into its condition, or into any of its affairs, or, with like intent, willfully omit to make a true entry of any material fact pertaining to the business of that

health service corporation in any book, report or statement of the health service corporation.

(6) No person may make, publish, disseminate or circulate, directly or indirectly, or aid, abet or encourage the making, publishing, disseminating or circulating of any oral or written statement or any pamphlet, circular, article or literature which is false, or maliciously critical of or derogatory to the financial condition of a health service corporation, or of an organization proposing to become a health service corporation, and which is calculated to injure any person engaged or proposing to engage in the business of operating a health service corporation.

(7) No person may enter into agreement to commit, or by any concerted action commit, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of the operation of health service corporations.

(8) No person may knowingly make or permit any unreasonable discrimination between individuals in any classification which may be established by a health service corporation and of essentially the same condition of health in the amount of dues or rates charged for any membership contract or in the benefits payable thereunder, or in any of the terms and conditions of such contract or in any manner whatever. Nothing herein contained shall, however, restrict the right of a health service corporation within the discretion of its board of directors to limit or define the classes of persons who shall be eligible to become members, to limit and to define the benefits which it will furnish, and define such benefits as it undertakes to furnish into classes or kinds. A health service corporation may make available to its members health services, or reimbursement therefor, as the board of directors of that corporation may approve.

History: En. 40-5918 by Sec. 18, Ch. 319, L. 1975.

40-5919. Certain exclusions. (1) Nothing contained in section 40-5918, subsection (8) includes within the definition of discrimination any of the following practices:

(a) readjustment of the rate of payment for membership in a health service corporation under a group contract based on the loss or expense experience thereunder at the end of the first or any subsequent contract year thereunder which may be made retroactive only for that contract year;

(b) in the case of membership contracts issued on the pre-authorized bank draft or similar plans, making allowance to members in an amount which fairly represents the saving in collection expense;

(c) reduction of the rate of payment for group contracts covering a large number of members, but not exceeding savings in administrative expenses reasonably attributable to these contracts as compared with contracts offering similar benefits to smaller numbers of members;

(d) issuing individual membership contracts on a "salary savings" or payroll deduction plan reasonably commensurate with the savings made by use of such plan.

(2) Nothing in this chapter gives the commissioner power to fix and determine a rate level by classification or otherwise.

History: En. 40-5919 by Sec. 19, Ch. 319, L. 1975.

40-5920. Notice of violation. If the commissioner shall for any reason have cause to believe that violation of this act has occurred or is threatened, the commissioner may give written notice to the health service corporation and to the representatives, or other persons who appear to be involved in the suspected violation, to arrange a conference with the alleged violators or their authorized representative for the purpose of attempting to ascertain the facts relating to the suspected violation, and in the event it appears that a violation has occurred or is threatened, to arrive at an adequate and effective means of correcting or preventing the violation.

History: En. 40-5920 by Sec. 20, Ch. 319, L. 1975.

40-5921. Cease and desist order. The commissioner acting in the name of the state may issue an order directing a health service corporation or a representative of a health service corporation to cease and desist from engaging in any act or practice in violation of the provisions of this act.

Within fifteen (15) days after service of the order of cease and desist, the respondent may request a hearing on the question of whether acts or practices in violation of this act have occurred. These hearings shall be conducted under the Montana Administrative Procedure Act.

History: En. 40-5921 by Sec. 21, Ch. 319, L. 1975.

40-5922. Injunctive relief. In the case of any violation of the provisions of this act, if the commissioner elects not to issue a cease and desist order, or in the event of noncompliance with a cease and desist order issued under this act, the commissioner may institute a proceeding to obtain injunctive relief, receivership, or other appropriate relief, in the district court of the county in which the violation occurs, or in which the principal place of business of the health service corporation is located. Any proceeding under this section shall conform to the requirements of chapter 42 or 44 of Title 93, except that the commissioner shall not be required to allege facts tending to show the lack of an adequate remedy at law or tending to show irreparable damage or loss.

History: En. 40-5922 by Sec. 22, Ch. 319, L. 1975.

40-5923. Grace period. Any corporation organized prior to the effective date of this act, under chapter 23 of Title 15, for the purpose of administering and operating a nonprofit health service plan, as described in this act, has a period of one (1) year after the effective date of this act to comply with all the provisions hereof.

History: En. 40-5923 by Sec. 23, Ch. 319, L. 1975.

CHAPTER 60—MEDICAL LIABILITY INSURANCE

Section 40-6001.	Purpose.
40-6002.	Definitions.
40-6003.	Joint underwriting association.
40-6004.	Procedures.
40-6005.	Participation.
40-6006.	Directors.
40-6007.	Appeals and judicial review.
40-6008.	Privileged communications.
40-6009.	Annual statements.
40-6010.	Examinations of association's affairs.

40-6001. Purpose. The legislature finds that a crisis exists because of the high cost and impending unavailability of medical liability insurance. The purpose of this act is to provide an interim solution to the unavailability of such insurance. This legislation will not resolve the underlying causes of the unavailability and high cost, which extend beyond the insurance mechanism. It is anticipated that future legislation will deal on a more permanent basis with the root causes of the current crisis. Accordingly, this act is enacted for a limited period of time.

History: En. 40-6001 by Sec. 1, Ch. 246, L. 1977.	Title of Act An act to establish a joint underwriting association for medical liability insurance.
---	---

40-6002. Definitions. As used in this act the following definitions apply:

(1) "Medical liability insurance" means insurance coverage against the legal liability of the insured and against loss, damage, or expense incident to a claim arising out of the death or injury of any person as the result of negligence in rendering professional service by a licensed physician or a hospital, hospital-related facility, or long-term care facility, as defined by 69-5201.

(2) "Association" means the joint underwriting association established pursuant to the provisions of this act.

(3) "Net direct premiums" mean gross direct premiums on personal injury liability insurance written pursuant to the provisions of the insurance laws of Montana, including the liability component of multiple peril package policies as computed by the commissioner of insurance, less return premiums or the unused or unabsorbed portions of premium deposits.

History: En. 40-6002 by Sec. 2, Ch. 246,
L. 1977.

40-6003. Joint underwriting association. (1) A joint underwriting association is hereby created, consisting of all insurers authorized to write and engaged in writing within this state on a direct basis insurance against legal liability for the death, injury, or disability of any person pursuant to the provisions of Title 40, including insurers covering the perils in multiple peril package policies. Each of these insurers shall be a **member** of the association and shall remain a member as a condition of its authority to continue to transact this kind of insurance in this state. The purpose of the association is to provide medical liability insurance on a self-supporting basis.

(2) The association may not commence underwriting operations for physicians until the commissioner of insurance, after due hearing and investigation, has determined that medical liability insurance cannot be made available for physicians in the voluntary market. Upon that determination the association is the exclusive agency through which medical liability insurance may be written in this state on a primary basis for physicians.

(3) The association may not commence underwriting operations for hospitals, hospital-related facilities, or long-term care facilities until the commissioner of insurance, after due hearing and investigation, has determined that medical liability insurance is not readily available for these facilities in the voluntary market. Upon that determination the association is authorized to issue policies of medical liability insurance to hospitals, hospital-related facilities, or long-term care facilities but need not be the exclusive agency through which this insurance may be written on a primary basis in this state.

(4) If the commissioner of insurance determines at any time that medical liability insurance can be made available in the voluntary market for either physicians or hospitals, hospital-related facilities, or long-term care facilities, the association shall thereby cease its underwriting operations for the medical liability insurance which the commissioner has determined can be made available in the voluntary market.

(5) The association has, pursuant to the provisions of this act and the plan of operation with respect to medical liability insurance, the power on behalf of its members to:

(a) subject to limits as specified in the plan of operation but not to exceed \$1 million for each claimant under one policy and \$3 million for all claimants under one policy in any 1 year, issue or cause to be issued policies of insurance to applicants, including incidental coverages;

(b) underwrite the insurance and assume reinsurance from its members; and

(c) cede reinsurance.

(6) (a) Within 45 days following the creation of the association, the directors of the association shall submit to the commissioner of insurance for his review a proposed plan of operation consistent with the provisions of this act to be fully effective and operative upon order of the commissioner of insurance.

(b) The plan of operation shall provide for economic, fair, and non-discriminatory administration and for the prompt and efficient provision of medical liability insurance and shall contain other provisions including but not limited to preliminary assessment of all members for initial expenses necessary to commence operations, establishment of necessary facilities, management of the association, assessment of members to defray losses and expenses, commission arrangements, reasonable and objective underwriting standards, acceptance and cession of reinsurance, appointment of servicing carriers, and procedures for determining amounts of insurance to be provided by the association.

(c) The plan of operation shall provide that any profit achieved by the association be added to the reserves of the association or returned to the policyholders as a dividend.

(d) Amendments to the plan of operation may be made by the directors of the association, subject to the approval of the commissioner of insurance, or shall be made at the direction of the commissioner.

History: En. 40-6003 by Sec. 3, Ch. 246,
L. 1977.

40-6004. Procedures. (1) (a) A licensed physician or hospital, on or after the effective date of the plan of operation, is entitled to apply to the association for coverage. The application may be made on behalf of an applicant by a broker or agent authorized by the applicant.

(b) If the association determines that the applicant meets the underwriting standards of the association as prescribed in the plan of operation and there is no unpaid, uncontested premium due from the applicant for prior insurance, as shown by the insured having failed to make written objections to the premium charges within 30 days after billing, then the association, upon receipt of the premium or such portion thereof as is prescribed in the plan of operation, shall cause to be issued a policy of professional liability insurance for a term of 1 year.

(2) (a) The rates, rating plans, rating rules, rating classifications, territories, and policy forms applicable to the insurance written by the association and statistics relating thereto are subject to the insurance laws of Montana, giving due consideration to the past and prospective loss and expense experience for medical liability insurance of all of the member companies of the association, trends in the frequency and severity of losses, the investment income of the association, and such other information as the commissioner of insurance may require.

(b) Within such time as the commissioner of insurance directs, the association shall submit for the approval of the commissioner an initial filing, in proper form, of policy forms, classifications, rates, rating plans, and rating rules applicable to medical liability insurance to be written by the association. In the event the commissioner disapproves the initial filing, in whole or in part, the association shall amend it in accordance with the direction of the commissioner. If the commissioner is unable to approve the filing or amended filing within the time specified, he shall promulgate the policy forms, classifications, rates, rating plans, and rules to be used by the association in writing such insurance.

(c) Any deficit sustained by the association in any 1 year shall be recouped pursuant to the plan of operation and the rating plan then in effect by one or both of the following procedures:

- (i) an assessment upon the policyholders; or
- (ii) a rate increase applicable prospectively.

(d) Effective after the initial year of operation, rates, rating plans, rating rules, and any provision for recoupment through policyholder assessment or premium rate increase shall be based upon the association's loss and expense experience, together with such other information based upon

that experience as the commissioner of insurance considers appropriate. The resultant premium rates shall be on an actuarially sound basis and shall be calculated to be self-supporting.

(e) In the event that sufficient funds are not available for the sound financial operation of the association, pending recoupment as provided in subsection (2)(d) of this section, all members shall on a **temporary basis** contribute to the financial requirements of the association in the manner provided for in this section. Contributions shall be reimbursed to the members following recoupment as provided in subsection (2)(d) of this section.

(f) The commissioner of insurance shall consider requiring the association to offer policies on both a claims made and occurrence basis so that applicants may select either policy at their option. However, the premium rate charged for both claims made and occurrence policies shall be at rates established on an actuarially sound basis and which are calculated to be self-supporting.

History: En. 40-6004 by Sec. 4, Ch. 246, L. 1977.

40-6005. Participation. All insurers which are members of the association shall participate in its writings, expenses, profits, and losses in the proportion that the net direct premiums of each member written during the preceding calendar year, after excluding that portion of premiums attributable to the operation of the association, bears to the aggregate net direct premiums written in this state by all members of the association. Each insurer's participation in the association shall be determined annually on the basis of the net direct premiums written during the preceding calendar year as reported in the annual statements and other reports filed by the insurer with the commissioner of insurance. No member is obligated in any 1 year to reimburse the association on account of its proportionate share in the deficit from operations of the association in that year in excess of 1% of its surplus to policyholders, and the aggregate amount not so reimbursed shall be reallocated among the remaining members in accordance with the method of determining participation prescribed in this section after excluding from the computation the total net direct premiums of all members not sharing in the excess deficit. In the event that the deficit from operations allocated to all members of the association in any calendar year exceeds 1% of their respective surplus to policyholders, the amount of the deficit shall be allocated to each member in accordance with the method of determining participation prescribed in this section.

History: En. 40-6005 by Sec. 5, Ch. 246, L. 1977.

40-6006. Directors. The association shall be governed by a board of directors, to be elected annually. Eight directors shall be elected by cumulative voting of members of the association, whose votes shall be weighted in accordance with each member's net direct premiums written during the preceding calendar year. Three directors shall be appointed by the commissioner of insurance as representatives of the medical profession, the

appointments being made at or before each annual meeting. The eight directors serving on the first board who are to be elected by members of the association shall be elected at a meeting of the members held at a time and place designated by the commissioner.

History: En. 40-6006 by Sec. 6, Ch. 246, L. 1977.

40-6007. Appeals and judicial review. (1) With respect to those items the plan of operation defines as appealable matters, an applicant to the association, a person insured pursuant to this act, his representative, or an affected insurer may appeal to the commissioner of insurance within 30 days after a ruling action or decision by or on behalf of the association.

(2) All orders of the commissioner of insurance made pursuant to this act are subject to judicial review as provided in Title 40.

History: En. 40-6007 by Sec. 7, Ch. 246, L. 1977.

40-6008. Privileged communications. There is no liability on the part of and no cause of action of any nature may arise against the association, its agents or employees, an insurer, a licensed agent or broker, or the commissioner of insurance or his authorized representatives for any statements made in good faith by them in any reports or communications concerning risks insured or to be insured by the association or at any administrative hearings conducted in connection therewith.

History: En. 40-6008 by Sec. 8, Ch. 246, L. 1977.

40-6009. Annual statements. The association shall file in the office of the commissioner of insurance annually on or before March 1 a statement containing information with respect to its transactions, condition, operations, and affairs during the preceding year. The statement shall contain the matters and information prescribed and shall be in a form approved by the commissioner. The commissioner may at any time require the association to furnish additional information with respect to its transactions, condition, or any matter connected therewith considered to be material and of assistance in evaluating the scope, operation, and experience of the association.

History: En. 40-6009 by Sec. 9, Ch. 246, L. 1977.

40-6010. Examinations of association's affairs. The commissioner of insurance shall make an examination into the affairs of the association at least annually. The examination shall be conducted and the report thereon filed in the manner provided by law. The expenses of every examination shall be borne and paid by the association in the manner prescribed by law.

History: En. 40-6010 by Sec. 10, Ch. 246, L. 1977.

Effective Date

Section 11 of Ch. 246, Laws 1977 read "This act is effective on its passage and

approval and expires on December 31, 1979, after which no new policies may be issued by the association. However, all issued policies continue in force until their expiration date."

Copyright © 1963, 1965, 1967, 1969, 1971, 1973, 1974, 1976 by
THE ALLEN SMITH COMPANY
Indianapolis, Indiana

Copyright © 1977 by
THE ALLEN SMITH COMPANY
Indianapolis, Indiana

NEW LAWS IN VOLUME 3 (Part 2)

For index see supplement to Replacement Volume 9

ENACTED IN 1963

Cattle protective districts, 46-2801 to 46-2805.
Historical society organization and functions, 44-516 to 44-528.
Marriage licenses, 48-144, 48-146 to 48-148.
Motor vehicles,
 Markings required on trucks and heavy vehicles, 53-801 to 53-803.
 Reciprocity and proportional registration, 53-701, 53-702, 53-704 to 53-724.
Sheep, permits for removal from county, 46-809 to 46-813.
Small tract financing act, 52-401 to 52-417.
Territorial and state warrants, sale by centennial commission, 44-527 note.

ENACTED IN 1965

Cattle protective districts within counties, 46-2806 to 46-2810.
Cigarette Sales Act, 51-301 to 51-314.
Legislative fiscal notes, 43-1001 to 43-1006.
National guard license plates, 53-106.7.
Restaurant, Bar and Tavern Wage Protection Act, 41-2001 to 41-2006, 41-2008, 41-2010.
State library commission powers, 44-131.
Winter work programs, 41-1901 to 41-1907.

ENACTED IN 1967

Abandoned vehicles, removal and sale, 53-901 to 53-909.
Federal tax lien filing, 45-1501 to 45-1507.
Historical society, admission fees to antique automobile exhibit, 44-529.
Interstate Library Compact, 44-601, 44-602.
Labor laws, enforcement and investigations, 41-1314.1.
Labor safety study commission, 41-2101 to 41-2108.
Legislative vacancies, 43-215, 43-216.
Library commission, 44-132 to 44-139.
Public libraries, 44-218 to 44-228.
Wage assignments taken by commissioner, 41-1314.2.

ENACTED IN 1969

Attachment or garnishment, discharge or layoff because of, prohibited, 41-305.1.
Dangerous drugs, possession and sale, 54-132 to 54-138.
Legislature,
 Certified roster of members, 43-206.1.
 Pre-session caucus, 43-218.
Livestock, receipts for consignments, 46-918.1.
Motor vehicles,
 Identification number, removal or falsification, 53-139.1.
 Transfer of license plates, 53-145 to 53-147.
Nurses, employment practices, 41-2201 to 41-2209.
Safety Act, 41-1708 to 41-1733.

ENACTED IN 1971

Disabled veterans, free license plates for, 53-106.8 to 53-106.11.
Employment agencies, regulation, 41-1417 to 41-1438.
Livestock dealer licensing and regulation, 46-2901 to 46-2907.
Mechanics' liens,
 Bond for release of lien, 45-513 to 45-515.
 Notice of completion to cut off time for filing, 45-502.1.
Mining,
 Notice to landowner of surface operations, 50-1301 to 50-1306.
 Reclamation of mining lands, 50-1201 to 50-1216, 50-1219 to 50-1224.

NEW LAWS IN VOLUME 3 (Part 2) (Continued)

Motor vehicle transfers and temporary stickers, 53-109.1 to 53-109.4.
Snowmobile licensing and operation, 53-1012 to 53-1023.
Tax-paid decals required, 53-1024 to 53-1028.
State-owned or leased motor vehicles, 53-514 to 53-521.
Wages and hours of labor, 41-2301 to 41-2307.

ENACTED IN 1973

Campers, tax-paid decal required, 53-644 to 53-647.
Drugs and controlled substances, 54-301 to 54-327.
Employee, deception as to working conditions, 41-118.
Joint city-county libraries, 44-219.1, 44-219.2.
Legislature,
Committee action between sessions, 43-716 to 43-719.
Compensation of legislators for services between sessions, 43-310.1.
Journals and session laws, delivery to printer, 43-711.1.
Redistricting and reapportionment by commission, 43-108 to 43-118.
Special session, procedure for calling, 43-319 to 43-322, 43-324, 43-325.
Tie vote in organizing legislative house, 43-210.1.
Mines,
False mining claim, filing, 50-702.1.
Open-cut mining, 50-1501 to 50-1516.
Strip-mined coal conservation, 50-1401 to 50-1409.
Strip mining and reclamation, 50-1034 to 50-1057.
Oil and gas well and pipeline liens, perfection and priority, 45-1004.1 to 45-1004.3.
Personalized license plates, 53-148 to 53-153.
Snowmobile registration, duplicate receipts and registration of dealers, 53-1025.1, 53-1029.
Vocational rehabilitation for handicapped persons, 41-816 to 41-819.
Women, employment practices relating to, 41-2401 to 41-2403.

ENACTED IN 1974

Labor,
Lie detector tests as condition of employment, prohibition, exceptions, 41-119, 41-120.
Wage collection and determination by commissioner, disposition, enforcement, 41-1314.3, 41-1314.4.
Landlord and tenant, tenant's security deposit, 42-301 to 42-309.
Legislature,
Legislative intern act, 43-720 to 43-731.
Officers of senate and house, 43-214.1.
Statutes, requirements for enactment, 43-508.1, 43-517, 43-518.
Library federation board of trustees, powers, 44-214.1.
Livestock,
Animal feedlots, inspection, penalty, 46-239.1 to 46-239.3.
Animal health law administrator, board to consider expertise of, 46-209.1.
Department of livestock, definitions, 46-103.1.
Livestock dealer's license, denial, suspension and revocation, 46-2903.1, 46-2903.2.
Livestock inspection before change of ownership or removal from county or state, transportation, definitions, 46-801.1, 46-801.3, 46-801.4.
Mines and mining,
Coal mining,
Boundary lines, 50-434.1.
Definitions, 50-401.1.
Duties of employees, 50-476.
Hoisting engineers, licensing, 50-479.
Inspections, orders, hearings, review, 50-480 to 50-480.8.
Internal combustion engines not permitted underground, 50-467.1.
Operator's report, notice, duty of division, 50-477, 50-478.
Severability clause, 50-482.
Violation and penalties, 50-481.
Reclamation of mining lands, notice and suspension of permits upon noncompliance with act, exceptions, 50-1225, 50-1226.
Strip Mining Siting Act, 50-1601 to 50-1617.

NEW LAWS IN VOLUME 3 (Part 2) (Continued)

Motor vehicles,

Inspections, 53-1101 to 53-1115.

State owned or leased vehicles, interagency transfer or rental, regulations, 53-519.1 to 53-519.3

ENACTED IN 1975

Dangerous drugs, criminal possession with intent to sell, 54-133.1.

Labor,

Contractors' bonds for wages and benefits, 41-2701 to 41-2705.

Employment agencies, maximum fees and filing of complaints, 41-1431.1, 41-1434.1.

Maternity leave, 41-2601 to 41-2606.

Strikebreakers, employment and prohibited acts, 41-2501 to 41-2505.

Legislative Finance Act, 43-1109 to 43-1119.

Libraries,

Depreciation reserve fund authorized, 44-229 to 44-231.

State grant programs, administration, definitions, allocation of funds and distribution of grants, 44-304 to 44-308.

Livestock,

Nonmarket sales, board regulation of certain types, 46-906.1.

Off-premise sales on occasion, authorization, 46-907.1.

Pork Research and Marketing Act, 46-3101 to 46-3113.

Local government code,

Alternative forms of local government, 47A-3-201 to 47A-3-208.

Limitations on self-government, 47A-7-201 to 47A-7-204.

Self-government powers, 47A-7-101 to 47A-7-106.

Mines,

Coal development impact, assistance and support for local governments, highway systems, and public schools, 50-1801 to 50-1810.

Open cut mining provisions, applicability to state and local governments, and to operations on federal lands, 50-1516.1, 50-1517.

Reclamation applications, review of existing files and waiver of confidentiality requirements, 50-1221.1, 50-1221.2.

Strip mining, protection of surface owner, 50-1039.1.

Uranium solution extraction control, 50-1701 to 50-1704.

Motor vehicle registration,

Anniversary date registration, payment of property taxes and fees, 53-154 to 53-162.

General fund reimbursement for registrar operation or number plate manufacture, 53-122.1.

Unfair practices, department defined, 51-101.1.

Uniform Marriage and Divorce Act, 48-301 to 48-341.

ENACTED IN 1977

Handicapped persons, special parking permits, 53-106.12.

Labor,

Employment of aliens not lawfully authorized to accept employment prohibited, 41-121.

Minimum wages and hours, exceptions, 41-2303.2.

Reciprocal Agreement for Collection of Wages Act, 41-1326 to 41-1331.

Legislature,

Anticipated vacancy, 43-216.1.

Continued participation in public retirement systems, 43-310.2.

Legislative History Act, 43-519 to 43-522.

Members allowed to be candidates for other public office during their term, 43-202.1 to 43-202.3.

Participation of legislators in state insurance group, 43-310.3.

Presession activity of house appropriations and senate finance and claims committees, 43-218.1.

Libraries,

Historical library authorized, 44-515.1.

Historic records network, 44-523.1, 44-523.2.

State library authorized, 44-126.1.

NEW LAWS IN VOLUME 3 (Part 2) (Continued)

Livestock,

- Dealers, 46-2906.1.
- Department of livestock, 46-105.1.
- Importation of livestock, inspection, 46-801.5.
- Injunctive remedies, 46-210.1.
- Livestock auction market, transfer of certificate, 46-909.1.

Local Government Code,

- Amendment of charters or alternative form, 47A-3-209.
- Nonpartisan primary and general elections, 47A-3-301 to 47A-3-303.
- Ordinances and resolutions, 47A-3-101 to 47A-3-108.

Mines, hard rock mining account, 50-1227.

Motor vehicle dealership, succession of interest, 51-609 to 51-615.

New motor vehicle manufacturers, distributors, and importers, licensing, 51-601 to 51-608.

Residential Landlord and Tenant Act, 42-401 to 42-442.

Snowmobiles, 53-1013.1, 53-1016.1.

Unfair Trade Practices, 51-502, 51-504, 51-505, 51-507 to 51-510, 51-524.

AMENDMENTS IN VOLUME 3 (Part 2)

Bounties for killing wild animals, 46-1901 to 46-1904, 46-1907 to 46-1909, 46-1912, 46-1914, 46-1915.

Cigarette Sales Act, 51-303.

Controlled substances, 54-301 to 54-303, 54-314 to 54-319, 54-322 to 54-323.

Dairies and milk plants, licensing, 46-232.

Dangerous drugs, 54-132 to 54-135, 54-137, 54-138.

Fences, 46-1410, 46-1411, 46-1413.

Grass conservation and grazing districts, 46-2301, 46-2302, 46-2307 to 46-2318, 46-2322, 46-2323, 46-2325, 46-2331, 46-2332.

Labor,

Apprenticeship council, 41-1201, 41-1202.

Arbitration board, 41-906.

Assignment of wages or salary to broker, spouse must join, 41-1506.

Commissioner, 41-1603.

Department of labor and industry, 41-1603, 41-1605.

Employment agency regulation, 41-1422, 41-1425.

Hours and conditions of employment, 41-1119 to 41-1121, 41-1123.

Minimum wages and hours, 41-2303, 41-2303.1, 41-2304, 41-2306, 41-2307.

Minors, employment as bartenders, 41-1135, 41-1136.

Preference of Montana labor in public works, 41-701.

Safety codes, 41-1709, 41-1713 to 41-1729, 41-1733.

State board of arbitration and conciliation, 41-908.

Termination of employment, 41-304.

Vocational rehabilitation, sheltered workshops for severely handicapped, 41-817, 41-818.

Wage Protection Act, 41-2002 to 41-2006, 41-2010.

Wages, payment, 41-1301 to 41-1304.

Landlord and tenant, tenants' security deposits, 42-301, 42-303 to 42-305, 42-308.

Legislature,

Annual sessions, time of convening, 43-205.

Ballot to vote on special session, 43-322.

Committee action between sessions, 43-717.

Compensation and expenses of members, 43-310.

Compensation of legislators for services between sessions, 43-310.1.

Effective date of acts, 43-508.

Fiscal notes, 43-1002, 43-1003, 43-1005, 43-1006.

Governor's action on bills passed, 43-501 to 43-505.

House, organization of, 43-208.

Journals and session laws, printing and distribution, 43-711.2 to 43-711.5, 44-411.

Legislative council, 43-709 to 43-711, 43-712, 43-713, 43-715, 43-716.

Legislative Finance Act, 43-1111, 43-1112, 43-1118.

Legislative Intern Act, 43-721, 43-725.

Lobbying, 43-801, 43-803, 43-806.

Officers of senate and house, 43-214.1.

Pre-session caucus, 43-218.

AMENDMENTS IN VOLUME 3 (Part 2) (Continued)

Legislature (Continued)

Printing of bills, resolutions and daily journals, 43-901 to 43-904.
Reapportionment commissioners' compensation, 43-111.
Senate, organization of, 43-207.
Special sessions, calling, 43-205.
Term of office of members, 43-202.
Vacancies, 43-215, 43-216.
Witnesses before the assembly, 43-404.

Libraries,

Historical society, 44-517, 44-518, 44-520, 44-523.
Joint city-county libraries, 44-219.2.
Library systems, 44-212 to 44-214, 44-215, 44-219.
State law library, 44-402, 44-403, 44-405.
State library commission, 44-127, 44-128, 44-131, 44-139.

Liens,

Agisters' liens, 45-1106, 45-1107.
Compensation of lienholders, 45-116.
Crop dusting liens, 45-1410.
Crop liens, 45-704, 45-707.
Farm laborers' liens, 45-911.
Future interests subject to liens, 45-109.
Loggers' liens, 45-401.
Mechanics' liens, 45-501, 45-502, 45-511.
Oil and gas well and pipeline liens, 45-1003.
Redemption of liens, 45-301.
Restoration of property to owner, 45-308.
Threshermen's, swathers' and combiners' liens, 45-801, 45-802, 45-808, 45-809.
Wages, priority in case of employer's death, 45-603.

Livestock,

Abandoned horses, 46-1801, 46-1802, 46-1804.
Administrator, 46-202 to 46-204, 46-206 to 46-209, 46-211 to 46-214, 46-216 to 46-222, 46-224, 46-226 to 46-236, 46-238, 46-239, 46-240, 46-247, 46-248.
Animals running at large, 46-1701, 46-1708, 46-1717.
Artificial insemination, 46-2505, 46-2515.
Butchers and meat peddlers, 46-501, 46-503, 46-506.
Cattle protective districts, 46-2804, 46-2805, 46-2809, 46-2810.
County protective committees, 46-2703 to 46-2706.
Dealers, 46-2901 to 46-2903, 46-2903.2, 46-2904 to 46-2907.
Department of livestock, 46-104, 46-105.
Estrays, 46-1001 to 46-1006, 46-1008, 46-1011, 46-1012.
Herd districts, 46-1501.
Hides and hide dealers, 46-1101.1, 46-1101.2, 46-1103, 46-1104, 46-1107, 46-1107.1, 46-1114.
Impounding livestock or domestic animals, 46-2004, 46-2007.
Inspection before sale or removal, 46-801.1, 46-801.2, 46-801.4, 46-802 to 46-804, 46-806, 46-808 to 46-813.
Inspectors and detectives, 46-701, 46-703 to 46-709.
Market inspection, 46-902, 46-903, 46-906 to 46-909, 46-911 to 46-918, 46-918.1, 46-920, 46-921.
Recording of marks and brands, 46-601, 46-603 to 46-607, 46-609.
Rendering or disposal plants, 46-2401 to 46-2409, 46-2411, 46-2412.
Sheep protection program, 46-2102, 46-2104.
Treating or feeding garbage to animals, regulation, 46-2602 to 46-2610.
Trespassing stock, 46-1406, 46-1409.
Tuberculin sale or distribution, 46-301, 46-302.
Unlawful driving, 46-3001 to 46-3008.

Loans,

Consumer Loan Act, 47-203 to 47-207, 47-209 to 47-211, 47-214 to 47-216, 47-218, 47-220, 47-223, 47-226.
Interest rates, 47-124, 47-125.

Local Government Code,

Charter form, 47A-3-208.
Commission-chairman form, 47A-3-206.
Commission-executive form, 47A-3-203.
Commission form, 47A-3-205.
Commission-manager form, 47A-3-204.

AMENDMENTS IN VOLUME 3 (Part 2) (Continued)

Marriage, 48-126, 48-130, 48-134 to 48-137, 48-139, 48-140, 48-146.

Mines,

Claims to mines and millsites, 50-701, 50-702, 50-704, 50-714.

Coal development impact, 50-1803, 50-1804, 50-1806.

Coal mining regulation, 50-401, 50-402 to 50-405, 50-407, 50-428 to 50-434, 50-468 to 50-476, 50-480.7.

Coal, sale and marketing regulations, 50-604, 50-606.

Eminent domain for right of way, 50-805, 50-813, 50-815, 50-816.

Notice to landowner of surface operations, 50-1305.

Open cut mining, 50-1502 to 50-1517.

Purchases of ore from leased mines, 50-303 to 50-305.

Reclamation of mining lands, 50-1203, 50-1204, 50-1207 to 50-1211, 50-1213 to 50-1216, 50-1220 to 50-1222.

Safety and investigations, 50-101, 50-102, 50-108, 50-118, 50-119.

Sampling and assaying of ore, 50-202, 50-204, 50-205.

Siting, 50-1601 to 50-1610, 50-1614 to 50-1617.

Strip mined coal conservation, 50-1404.

Strip mining and underground mine reclamation, 50-1034 to 50-1039, 50-1040 to 50-1046, 50-1052 to 50-1055.

Uranium solution extraction control, 50-1704.

Mortgages, 52-114, 52-116, 52-117.

Fees for recording marks and brands, 52-322.

Real property mortgages, 52-212.

Small tract financing, 52-402, 52-404, 52-409.

Motor vehicles,

Abandoned vehicles, 53-901 to 53-903.

Fees and taxes in addition to registration fees, 53-639.1, 53-639.2, 53-640, 53-642 to 53-644, 53-647.

Reciprocity and proportional registration, 53-702, 53-704, 53-705, 53-707, 53-708 to 53-712, 53-713, 53-716 to 53-719, 53-721, 53-722, 53-724.

Registration and licenses, 53-101, 53-102, 53-104, 53-106, 53-106.1, 53-106.6 to 53-106.8, 53-106.10, 53-107 to 53-109, 53-109.1, 53-109.4, 53-110, 53-112 to 53-115, 53-117 to 53-119.1, 53-120, 53-122, 53-129, 53-133, 53-136, 53-139, 53-146 to 53-148 to 53-157, 53-161.

Safety Responsibility Act, 53-418, 53-420, 53-428, 53-431, 53-432, 53-438, 53-449 to 53-450.

State-owned or leased, 53-514 to 53-519, 53-520, 53-521.

Security agreements concerning personal property, 52-312 to 52-314, 52-319 to 52-323.

Snowmobiles, 53-1012 to 53-1016, 53-1017 to 53-1020, 53-1022, 53-1023, 53-1025 to 53-1029.

Unfair Trade Practices, 51-501, 51-503, 51-506, 51-511 to 51-523.

Uniform Marriage and Divorce Act, 48-309, 48-311, 48-315, 48-317, 48-328, 48-331, 48-333.

MONTANA REVISED CODES

TITLE 41—LABOR

- Chapter
1. Obligations of employers, 41-118 to 41-121.
 3. Termination of employment, 41-304, 41-305.1.
 6. Report of alien employees to industrial accident board, Repealed—Section 1, Chapter 144, Laws of 1971.
 7. Preference of Montana labor in public works contracts, 41-701.
 8. Vocational rehabilitation and education, 41-816 to 41-819.
 9. State board of arbitration and conciliation, 41-906, 41-908.
 11. Hours of labor in various employments, 41-1119 to 41-1121, 41-1123, 41-1135, 41-1136.
 12. Apprenticeship council and contracts, 41-1201, 41-1202.
 13. Payment of wages and protection of discharged employees, 41-1301 to 41-1304, 41-1314.1 to 41-1314.4, 41-1326 to 41-1331.
 14. Employment agencies, regulation, 41-1417 to 41-1431.1, 41-1432 to 41-1434.1, 41-1435 to 41-1438.
 15. Wage brokers, 41-1506.
 16. Department of labor and industry, 41-1603, 41-1605.
 17. Safety codes, 41-1708 to 41-1733.
 19. Winter work programs, 41-1901 to 41-1907.
 20. Restaurant, Bar and Tavern Wage Protection Act, 41-2001 to 41-2006, 41-2008, 41-2010.
 21. Labor safety study commission, Repealed—Section 39, Chapter 187, Laws of 1977.
 22. Nurses—employment practices, 41-2201 to 41-2209.
 23. Minimum wages and hours, 41-2301 to 41-2307.
 24. Employment of women, 41-2401 to 41-2403.
 25. Employment of strikebreakers, 41-2501 to 41-2505.
 26. Maternity leave, 41-2601 to 41-2606.
 27. Contractors' bonds for wages and benefits, 41-2701 to 41-2705.

CHAPTER 1—OBLIGATIONS OF EMPLOYERS

- Section
- 41-118. Deceived employees—action for damages.
 - 41-119. Lie detector tests—when prohibited.
 - 41-120. Law enforcement agencies exempt.
 - 41-121. Employment of aliens not lawfully authorized to accept employment prohibited.

41-103. (7758) When not.

Assumption of Risk

Where master, in an action against him for injuries sustained by a servant during course of employment, introduced evidence tending to show that the servant had actual or implied knowledge of the dangerous condition but voluntarily remained in the face of the danger, and that the injury resulted as a usual and probable consequence of the dangerous condition, then refusal of the trial court to

instruct the jury properly on assumption of risk deprived defendant of a possible defense and was prejudicial error. *Wollan v. Lord*, 142 M 498, 385 P 2d 102.

Employee with prior back injury who neither informed his employer of his previous injury, nor refused to lift 500-pound tire without additional help, assumed the risk of the resultant additional injury to his back. *McLaughlin v. Ballard*, 156 M 181, 478 P 2d 281.

41-118. Deceived employees—action for damages. (1) No one doing business in this state shall induce, influence, persuade, or engage workmen to change from one place to another in this state, through or by means of deception, misrepresentation, or false advertising concerning the kind or

character of the work, or the sanitary or other conditions of employment, or as to the existence of a strike or other trouble pending between the employer and the employees, at the time of, or immediately prior to, such engagement. Failure to state in any advertisement, proposal, or contract for the employment of workmen that there is a strike, lockout, or other labor trouble at the place of the proposed employment, when in fact such strike, lockout, or other trouble then actually exists at such place, shall be deemed a false advertisement and misrepresentation for the purpose of this section.

(2) Any workman influenced, induced, persuaded, or engaged through or by means of any of the things prohibited by subsection (1) of this section has a right of action for recovery of all damages that he had sustained in consequence of the deception, misrepresentation, or false advertising used to induce him to change his place of employment, against anyone directly or indirectly procuring such change, and in addition thereto, he shall recover reasonable attorneys' fees to be fixed by the court and taxed as costs in any judgment recovered.

History: En. 41-118 by Sec. 2, Ch. 513, L. 1973.

41-119. Lie detector tests—when prohibited. No person, firm, corporation or other business entity or representative thereof, shall require as a condition for employment or continuation of employment any person to take a polygraph test or any form of a mechanical lie detector test. A person who violates this section is guilty of a misdemeanor.

History: En. Sec. 1, Ch. 46, L. 1974.

Title of Act

An act prohibiting an employer, except law enforcement agencies, from requiring

an employee or prospective employee to take a mechanical lie detector test as a condition of obtaining or continuing employment; providing a penalty; and providing an effective date.

41-120. Law enforcement agencies exempt. This act shall not apply to public law enforcement agencies.

History: En. Sec. 2, Ch. 46, L. 1974.

Effective Date

Section 3 of Ch. 46, Laws 1974 provided

the act should be in effect from and after its passage and approval. Approved February 26, 1974.

41-121. Employment of aliens not lawfully authorized to accept employment prohibited. (1) No employer may knowingly employ an alien who is not lawfully authorized to accept employment.

(2) A person convicted of violating this section shall be fined no more than \$300.

(3) The department of labor and industry or a person harmed by a violation of this section may sue to enjoin an employer from violating this section and to gain other appropriate relief.

History: En. 41-121 by Sec. 1, Ch. 56, L. 1977.

Title of Act

An act to prohibit the employment of

aliens not lawfully authorized to accept employment; providing a penalty; and creating a civil cause of action.

CHAPTER 2—OBLIGATIONS OF EMPLOYEES

41-211. (7778) What belongs to employer.

Customer Lists

Where names and addresses of milk-route customers were not confidential and were readily accessible, route salesman who terminated his employment with a dairy and returned his list of customers

but remembered their names and addresses would not be enjoined from soliciting them as customers for a competing dairy. *Best Dairy Farms, Inc. v. Houchen*, 152 M 194, 448 P 2d 158.

CHAPTER 3—TERMINATION OF EMPLOYMENT

Section 41-304. Termination at will.

41-305.1. Termination of employment because of attachment or garnishment prohibited.

41-304. (7789) Termination at will. An employment having no specified term may be terminated at the will of either party, on notice to the other, except where otherwise provided by sections 41-101 to 41-407 and 2-109 to 2-112 and 2-401 to 2-405, and except as provided in section 1 [41-305.1] of this act.

History: En. Sec. 2703, Civ. C. 1895; re-en. Sec. 5274, Rev. C. 1907; re-en. Sec. 7789, R. C. M. 1921; amd. Sec. 2, Ch. 245, L. 1969. Cal. Civ. C. Sec. 1999. Field Civ. C. Sec. 1029.

Amendments

The 1969 amendment added "and except as provided in section 1 of this act."

41-305. (7790) Termination by employer for fault.

Burden of Proof

Employer, who introduced evidence of drinking, hang-overs, and other matters in an effort to establish cause for discharge but whose superintendent testified as to employee's good work and that employer instructed him to tell employee

that employer did not have any more work, was running out of money, and could not carry a crew through the winter, failed to establish that employee's discharge was for good cause. *Ameline v. Pack & Co.*, 157 M 301, 485 P 2d 689.

41-305.1. Termination of employment because of attachment or garnishment prohibited. No employer shall discharge or lay off an employee because of attachment or garnishment served on the employer against the wages of the employee.

History: En. Sec. 1, Ch. 245, L. 1969.

Title of Act

An act relating to termination of em-

ployment providing that garnishment or attachment of wages may not be grounds for termination of employment; amending section 41-304, R. C. M. 1947.

41-307. (7792) Compensation of employee dismissed for cause.

Dismissal for Cause

Employer, who introduced evidence of drinking, hang-overs, and other matters in an effort to establish cause for discharge, but whose superintendent testified as to employee's good work, that employer instructed him to tell employee

that employer did not have any more work, was running out of money, and could not carry a crew through the winter, failed to establish that employee's discharge was for "good cause." *Ameline v. Pack & Co.*, 157 M 301, 485 P 2d 689.

CHAPTER 4—MASTER AND SERVANT

41-403. (7796) Same—presumed to be monthly, when.

Reimbursement of Expenses

This section is broad enough to cover reimbursement of expenses incurred by the employee, and employee's claim for

reimbursement accrued monthly in the absence of any other understanding. Cartwright v. Joyce, 155 M 478, 473 P 2d 515.

CHAPTER 6—REPORT OF ALIEN EMPLOYEES TO INDUSTRIAL ACCIDENT BOARD

(Repealed—Section 1, Chapter 144, Laws of 1971)

41-601 to 41-604. (3040 to 3043) Repealed.

Repeal

Sections 41-601 to 41-604 (Secs. 1 to 4, Ch. 134, L. 1919), relating to reports on

alien employees, were repealed by Sec. 1, Ch. 144, Laws 1971.

CHAPTER 7—PREFERENCE OF MONTANA LABOR IN PUBLIC WORKS CONTRACTS

Section 41-701. Preference of Montana labor in public works—wage scale—not to conflict with federal statutes.

41-701. (3043.1) Preference of Montana labor in public works—wage scale—not to conflict with federal statutes. In all contracts hereafter let for state, county, municipal, school, heavy highway or municipal construction, services, repair and maintenance work under any of the laws of this state there shall be inserted in each of said contracts a provision by which the contractor must give preference to the employment of bona fide Montana residents in the performance of said work, and that the said contractor must further pay the standard prevailing rate of wages including fringe benefits for health and welfare and pension contributions, and travel allowance provisions in effect and applicable to the county or locality in which the work is being performed. "Standard prevailing rate of wages including fringe benefits for health and welfare and pension contributions, and travel allowance provisions, applicable to the county or locality in which the work is being performed," means those wages including fringe benefits for health and welfare and pension contributions, and travel allowance provisions which are paid in the county or locality by other contractors for work of a similar character performed in that county or locality by each craft, classification or type of worker needed to complete a contract under this act. When work of a similar character is not being performed in the county or locality, the standard prevailing rate of wages including fringe benefits for health and welfare and pension contributions, and travel allowance provisions shall be those rates established by collective bargaining agreements in effect in the county or locality for each craft, classification or type of worker needed to complete the contract. No contract shall be let to any person, firm, association or corporation refusing to execute an agreement with the above-mentioned provisions in it; provided that, in contracts involving the expenditure of federal aid funds this act shall not be enforced in such a manner as to conflict with or be con-

trary to the federal statutes prescribing a labor preference to honorably discharged soldiers, sailors and marines, and prohibiting as unlawful any other preference or discrimination among citizens of the United States. All public works contracts under this act shall be approved in writing by the legal adviser of the contracting state, county, municipal corporation, school district, assessment district or special improvement district body or officer prior to execution by the contracting public officer or officers. Whenever the employer is not signatory party to a collective bargaining agreement, those moneys designated as negotiated fringe benefits shall be paid to the employee as wages.

(1) The Montana commissioner of labor may determine the standard prevailing rate of wages in the county or locality in which the contract is to be performed. The commissioner shall undertake to keep and maintain copies of collective bargaining agreements and other information from which rates and jurisdictional areas applicable to public works contracts under this act may be ascertained.

(2) Contractors, subcontractors, and employers who are performing work or providing services under public works contracts as provided in this act shall post in a prominent and accessible site on the project or work area, not later than the first day of work, a legible statement of all wages to be paid to the employees employed on such site or work area.

(3) Any contractor, subcontractor or employer who shall pay workers or employees at less than the standard prevailing wage as established under the public works contract shall forfeit to the contracting agency the sum of twenty-five dollars (\$25) a day for each worker so underpaid. Whenever it shall appear to the contracting agency or to the Montana commissioner of labor that there are insufficient moneys due to the contractor or the employer under the terms of the contract to cover such penalties, the Montana commissioner of labor may within ninety (90) days after the filing of notice of completion of the project and its acceptance by the contracting agency, maintain an action in district court to recover all such penalties and forfeitures due. Nothing in this section shall prevent the individual worker who has been underpaid from maintaining an action for recovery of the wages due under the contract as provided in chapter 13 of this title.

(4) The provisions of this act do not apply in those instances where the standard prevailing rate of wages is determined pursuant to federal law.

(5) In no instances where this act is applicable shall the standard prevailing rate of wage be determined to be greater than the applicable rate of wage in the area for the particular work in question as negotiated under existing and current collective bargaining agreements.

History: En. Sec. 1, Ch. 102, L. 1931; amd. Sec. 1, Ch. 32, L. 1955; amd. Sec. 1, Ch. 43, L. 1961; amd. Sec. 1, Ch. 265, L. 1969; amd. Sec. 1, Ch. 375, L. 1973; amd. Sec. 1, Ch. 531, L. 1975.

Amendments

The 1969 amendment rewrote portions of this section, redefining the standard prevailing rate of wages to include fringe benefits for health and welfare and pen-

sion contributions and travel allowance provisions, providing for approval of public works contracts by the contracting state agency's legal adviser and requiring the commissioner of labor and industry to keep copies of collective bargaining agreements and other information.

The 1973 amendment inserted "services" near the beginning of the first sentence.

The 1975 amendment substituted "worker" for "workman" in two places in the preliminary paragraph; deleted a sentence reading "The Montana commissioner of labor and industry shall undertake to keep and maintain copies of collective bargaining agreements and other information from which rates and jurisdictional areas applicable to public works contracts under this act may be ascer-

tained" before the last sentence of the preliminary paragraph; and added subdivisions (1) to (5).

Effective Date

Section 2 of Ch. 531, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved May 1, 1975.

CHAPTER 8—VOCATIONAL REHABILITATION AND EDUCATION

- Section 41-801. [Transferred.]
 41-803. [Transferred.]
 41-805, 41-806. [Transferred.]
 41-808. [Transferred.]
 41-810. [Transferred.]
 41-812, 41-813. [Transferred.]
 41-816. Vocational rehabilitation of handicapped persons—legislative purpose and findings.
 41-817. Definitions.
 41-818. Purchase of services for severely handicapped persons—determination of eligibility—register of qualified organizations—rules and regulations.
 41-819. Use of federal funds.

41-801. [Transferred.]

Compiler's Notes

Section 10 of Ch. 121, Laws of 1974 renumbered this section as sec. 71-2101.

41-802. Repealed.

Repeal

Section 41-802 (Sec. 2, Ch. 74, L. 1947; Sec. 2, Ch. 53, L. 1961), relating to estab-

lishment of the division of vocational rehabilitation, was repealed by Sec. 52, Ch. 121, Laws of 1974.

41-803. [Transferred.]

Compiler's Notes

Section 11, Ch. 121, Laws of 1974 renumbered this section as sec. 71-2102.

41-804. Repealed.

Repeal

Section 41-804 (Sec. 4, Ch. 74, L. 1947; Sec. 4, Ch. 53, L. 1961; Sec. 2, Ch. 192, L.

1971), relating to the administration of vocational rehabilitation services, was repealed by Sec. 52, Ch. 121, Laws of 1974.

41-805, 41-806. [Transferred.]

Compiler's Notes

Sections 12 and 13, Ch. 121, Laws of

1974 renumbered these sections as 71-2103 and 71-2104.

41-807. Repealed.

Repeal

Section 41-807 (Sec. 7, Ch. 74, L. 1947), relating to the acceptance and disposition

of gifts by the vocational rehabilitation director, was repealed by Sec. 52, Ch. 121, Laws of 1974.

41-808. [Transferred.]**Compiler's Notes**

Section 14, Ch. 121, Laws of 1974 re-numbered this section as sec. 71-2105.

41-809. Repealed.**Repeal**

Section 41-809 (Sec. 9, Ch. 74, L. 1947), prohibiting assignment of maintenance

under the vocational rehabilitation act, was repealed by Sec. 52, Ch. 121, Laws of 1974.

41-810. [Transferred.]**Compiler's Notes**

Section 15, Ch. 121, Laws of 1974 re-numbered this section as sec. 71-2106.

41-811. Repealed.**Repeal**

Section 41-811 (Sec. 11, Ch. 74, L. 1947), relating to misuse of vocational rehabili-

tation lists and records, was repealed by Sec. 52, Ch. 121, Laws of 1974.

41-812, 41-813. [Transferred.]**Compiler's Notes**

Sections 16 and 17, Ch. 121, Laws of

1974 renumbered these sections as secs. 71-2107 and 71-2108.

41-814, 41-815. Repealed.**Repeal**

Sections 41-814 and 41-815 (Secs. 15, 16, Ch. 74, L. 1947), relating to the savings

clause and short title of the vocational rehabilitation act, were repealed by Sec. 52, Ch. 121, Laws of 1974.

41-816. Vocational rehabilitation of handicapped persons—legislative purpose and findings. The purpose of this act is to encourage the development, improvement and expansion of sheltered employment and supervised work programs for mentally retarded, severely handicapped and disadvantaged individuals to enable them to become contributing and self-supporting members of society as an alternative to dependency.

The condition of the mentally retarded, severely handicapped and disadvantaged is such that after laborious training in the schools and otherwise they reach the point in their lives where they can and should, under proper and continued guidance, engage in sheltered employment or supervised work to help them become contributing members of society instead of being dependent. For such persons, retention in sheltered employment or supervised work may constitute satisfactory placement. Such training and placement is often a suitable alternative to institutionalization or idleness and its consequences. By keeping these individuals within their communities and in touch with their families, a worthwhile dimension is added to their lives and they are thus spared the anxieties naturally attached to separation. All of these factors have also been shown to reflect tangible benefits upon the mentally retarded, severely handicapped or disadvantaged person by improving his over-all well-being.

History: En. Sec. 1, Ch. 322, L. 1973.

Title of Act

An act authorizing the department of social and rehabilitation services to pur-

chase vocational rehabilitation services for handicapped persons; authorizing the department to promulgate rules and regulations under this act; and providing for the expenditure of funds for this purpose.

41-817. Definitions. (1) "Severely handicapped person" means any individual:

(a) who has a physical or mental impairment which requires multiple services over an extended period of time and results from amputation, blindness, cancer, cerebral palsy, cystic fibrosis, deafness, heart disease, hemiplegia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, and other spinal cord conditions, renal failure, and any other disability specified by the department in regulations it shall prescribe; or

(b) who, because of lack of social competence, mobility, experience, skills, training, or other successful characteristics is in need of sheltered employment or work activity services in a protective setting.

(2) "Physical or mental disability" means a physical or mental condition which materially limits, contributes to limiting, or if not corrected will probably result in limiting an individual's activities or functioning. The term includes behavioral disorders characterized by deviant social behavior or impaired ability to carry out normal relationships with family and community which may result from vocational, educational, cultural, social, environmental, or other factors.

(3) "Vocational rehabilitation services" means goods or services provided handicapped persons to enable such persons to be fit for gainful occupation or to attain or maintain a maximum degree of self-support or self-care and includes every type of goods and services for which federal funds are available for vocational rehabilitation purposes, including but not limited to the establishment, construction, development, operation, and maintenance of workshops and rehabilitation facilities.

(4) "Self-care" means a reasonable degree of restoration from dependency upon others for personal needs and care and includes but is not limited to ability to live in own home rather than requiring nursing home care and care for self rather than requiring attendant care.

(5) "Department" means the department of social and rehabilitation services.

(6) "Sheltered workshop" means a charitable organization or institution conducted not for profit but for the purpose of carrying out a recognized program of rehabilitation for handicapped workers or providing such individuals with remunerative employment or other occupational rehabilitating activity of an educational or therapeutic nature.

(7) "Work activity center" means a physically separated department of a workshop having an identifiable program, separate supervision and records, and which is planned and designed exclusively to provide therapeutic activities for handicapped workers whose physical or mental impairment is so severe as to make their productive capacity inconsequential.

Therapeutic activities include custodial activities (such as activities where the focus is on teaching the basic skills of living) and any purposeful activity so long as work or production is not the main purpose.

History: En. Sec. 2, Ch. 322, L. 1973; amd. Sec. 1, Ch. 333, L. 1974; amd. Sec. 10, Ch. 37, L. 1977.

Amendments

The 1974 amendment inserted "severely" in the caption; substituted present subdivisions (1)(a) and (1)(b) for subdivisions reading "(a) who has a physical or mental disability, which constitutes a substantial handicap to employment, of such a nature that vocational rehabilitation services may reasonably be expected to render him fit to engage in a gainful occupation consistent with his capacities

and abilities; or (b) who, because of lack of social competence or mobility, experience, skills, training or other factors, is in need of vocational rehabilitation services in order to become fit to engage in a gainful occupation or to attain or maintain a maximum degree of self-support or self-care; or"; deleted a former subdivision (1)(c) reading "for whom vocational rehabilitation services are necessary to determine rehabilitation potential"; and added subsections (6) and (7).

The 1977 amendment made minor changes in phraseology and punctuation.

41-818. Purchase of services for severely handicapped persons—determination of eligibility—register of qualified organizations—rules and regulations. (1) The department may purchase, sheltered employment services from any sheltered workshop in Montana or work activity services from any work activity center within Montana for severely handicapped persons. The performance of and payment for such services shall be subject to post-audit review by the state auditor.

(2) The department shall maintain a register of nonprofit organizations which it and other appropriate state and federal agencies have inspected and certified as meeting required standards and as qualifying to serve the needs of such severely handicapped or disadvantaged persons. Eligibility of organizations to receive the funds specified by this act shall be based upon standards and criteria promulgated by the department.

(3) The department is authorized to promulgate such rules and regulations as it may deem necessary or proper to carry out the provisions of this section.

History: En. Sec. 3, Ch. 322, L. 1973; amd. Sec. 2, Ch. 333, L. 1974.

Amendments

The 1974 amendment substituted the first sentence of subsection (1) for one reading "The department may purchase, from any source, by contract, vocational rehabilitation services for handicapped persons, payments for such services to be made subject to procedures and fiscal controls approved by the department of administration"; deleted former subsection (2) which read "Notwithstanding any other provision of this act, when the department determines that a mentally retarded, severely handicapped or disadvantaged person can reasonably be expected to benefit from, or in his best interests reasonably requires extended sheltered employment or supervised work furnished by an approved nonprofit organization, the department is authorized to contract with such organization for the

furnishing of such sheltered employment or supervised work to such mentally retarded, severely handicapped or disadvantaged person. The department is authorized to expend for or toward the cost of providing such sheltered employment or supervised work a sum or sums not to exceed one thousand five hundred dollars (\$1,500) per annum for each such mentally retarded, severely handicapped or disadvantaged person in order to maintain him as a contributing and self-supporting member of society as an alternative to dependency; provided, that the department is authorized to expend in excess of one thousand five hundred dollars (\$1,500) per annum for each such mentally retarded, severely handicapped or disadvantaged person when federal or other funding becomes available to the state agency for such purpose and such additional expenditures may continue as long as the additional federal or other funding is or becomes available"; deleted former sub-

section (3) which read "The determination of eligibility for such service shall be made for each individual by the department"; redesignated the remaining subsections as (2) and (3); inserted "and other appropriate state and federal agencies" in the first sentence of subsection (2) after "organizations which it"; and made a minor change in phraseology.

Effective Date

Section 3 of Ch. 333, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 28, 1974.

41-819. Use of federal funds. Federal funds as may be available are appropriated to the department for use in administering the provisions of this act.

History: En. Sec. 4, Ch. 322, L. 1973.

CHAPTER 9—STATE BOARD OF ARBITRATION AND CONCILIATION

Section 41-906. Decisions of board—report to governor.

41-908. Parties may agree to special board of arbitration.

41-901. (3052) State board of arbitration and conciliation.

Cross-References

Board abolished, sec. 82A-1010(2).

41-904. (3055) Settlement of controversies.

Controversy between Contracts

In dispute as to which labor contract should be effective for the construction of settling basins, plaintiff who had two separate contracts with the union, with

identical arbitration clauses, had a right to demand that the matter be settled by arbitration. *Sletten Constr. Co. v. International Union of Operating Engineers*, Local 400, 383 F Supp 853.

41-906. (3057) Decisions of board—report to governor. Upon the receipt of said application and after such notice, the board shall proceed as before provided, and render a written decision, which shall be open to the public inspection, shall be recorded upon the records of the board, [and] the board shall report as provided in section 2 [82-4002] of this act.

History: En. Sec. 3335, Pol. C. 1895; re-en. Sec. 1675, Rev. C. 1907; re-en. Sec. 3057, R. C. M. 1921; amd. Sec. 13, Ch. 93, L. 1969.

Compiler's Notes

The compiler has inserted the bracketed word "and."

Amendments

The 1969 amendment substituted "the board shall report as provided in section 2 of this act" for "and published at the discretion of the same in an annual report to be made to the governor on or before the first day of December in each year."

41-908. (3059) Parties may agree to special board of arbitration. (1) and (2) * * * [Same as parent volume.]

(3) Witnesses summoned by the state board shall be allowed the sum of fifty cents for each attendance, and the further sum of twenty-five cents for each hour of attendance in excess of two hours, and shall be allowed five cents a mile for travel each way from their respective places of employment or business to the place where the board is in session. Each witness shall certify in writing the amount of his travel and attendance, and the amount due him shall be certified to the department of adminis-

tration for auditing, and the same shall be paid as other expenses of the state from any moneys in the state treasury.

History: En. Sec. 3337, Pol. C. 1895; re-en. Sec. 1677, Rev. C. 1907; re-en. Sec. 3059, R. C. M. 1921; amd. Sec. 5, Ch. 343, L. 1977.

Amendments

The 1977 amendment substituted "department of administration" in subsection (3) for "state board of examiners."

CHAPTER 11—HOURS OF LABOR IN VARIOUS EMPLOYMENTS

Section 41-1119. Seats for employees.

41-1120. Violation of preceding section a misdemeanor—penalty.

41-1121. Hours of labor for state and municipal governments, mines, mills, smelters.

41-1123. Railway employees—hours of labor.

41-1135. Employment of persons under eighteen as bartenders forbidden.

41-1136. Penalty.

41-1118. (3076) Repealed.

Repeal

Section 41-1118 (Sec. 1, Ch. 108, L. 1913; Sec. 1, Ch. 18, L. 1917), relating to

hours of labor for female employees, was repealed by Sec. 2, Ch. 51, Laws 1971.

41-1119. (3077) Seats for employees. Every employer in any manufacturing, mechanical, or mercantile establishment, laundry, hotel, or restaurant, or other establishment employing any person, shall provide suitable seats for all employees and shall permit them to use such seats when they are not employed in the active duties of their employment.

History: En. Sec. 2, Ch. 108, L. 1913; amd. Sec. 2, Ch. 18, L. 1917; re-en. Sec. 2, Ch. 70, L. 1917; re-en. Sec. 3077, R. C. M. 1921; amd. Sec. 22, Ch. 535, L. 1975.

Amendments

The 1975 amendment substituted "any person" for "any female"; and substituted "all employees" for "all female employees."

41-1120. (3078) Violation of preceding section a misdemeanor—penalty. Any employer who shall fail, neglect, or refuse to provide suitable seats, as provided in section 41-1119, or who shall permit or suffer any overseer, superintendent, or other agent of any such employer to violate any of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined for each offense not less than fifty dollars (\$50) nor more than two hundred dollars (\$200), or be imprisoned in the county jail for a period of not less than ten (10) nor more than sixty (60) days, or both such fine and imprisonment.

History: En. Sec. 3, Ch. 108, L. 1913; amd. Sec. 3, Ch. 18, L. 1917; re-en. Sec. 3, Ch. 70, L. 1917; re-en. Sec. 3078, R. C. M. 1921; amd. Sec. 1, Ch. 51, L. 1971.

Repealing Clause

Section 2 of Ch. 51, Laws 1971 read "Section 41-1118, R. C. M. 1947, is repealed."

Amendments

The 1971 amendment deleted clauses relating to violations of section 41-1118 which appeared near the beginning of the section; and made minor changes in style.

Effective Date

Section 3 of Ch. 51, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 20, 1971.

41-1121. (3079) Hours of labor for state and municipal governments, mines, mills, smelters. A period of eight hours shall constitute a day's work in all works and undertakings carried on or aided by any municipal,

county, or state government, first class school districts, and on all contracts let by them, and for all janitors, except in courthouses of sixth and seventh class counties, engineers, firemen, caretakers, custodians and laborers employed in or about any buildings, works, or grounds used or occupied for any purpose by any municipal, county, or state governments, school districts of first class, and in mills and smelters for the treatment of ores, and in underground mines, and in the washing, reducing and treatment of coal; except in cases of emergency when life or property are in imminent danger. Provided, that for fire fighters in cities of the first and second class, a work week shall be a period of a maximum of forty hours during a five day week. In counties where regular road and bridge departments are maintained, the county commissioners may, with the approval of the employees or their duly constituted representative, establish a forty (40) hour work week consisting of four (4) consecutive ten (10) hour days. No employee shall be required to work in excess of eight (8) hours in any one (1) work day if they prefer not to.

History: En. Sec. 1, Ch. 50, L. 1905; amd. Sec. 1, Ch. 108, L. 1907; Sec. 1739, Rev. C. 1907; amd. Sec. 1, Ch. 30, L. 1917; re-en. Sec. 3079, R. C. M. 1921; amd. Sec. 2, Ch. 116, L. 1929; amd. Sec. 1, Ch. 135, L. 1943; amd. Sec. 1, Ch. 244, L. 1957; amd. Sec. 1, Ch. 395, L. 1975. Cal. Pol. C. Secs. 3244, 3245.

Amendments

The 1975 amendment added the last two sentences.

Overtime Computation

Forty-hour work week was proper basis for determining hourly rate in computing overtime pay for state employees who worked on twenty-four hours per day basis. *Glick v. State*, by and through Montana Dept. of Institutions, 162 M 82, 509 P 2d 1, 5, certiorari denied, 414 US 856, 38 L Ed 2d 106, 94 S Ct 158.

41-1123. (3081) Railway employees—hours of labor. On all lines of railroads or railways operated in whole or in part within this state, the time of labor of locomotive engineers, locomotive firemen, conductors, trainmen, operators, and agents acting as operators, employed in running or operating the locomotive engines or trains on or over such railroads or railways in this state, shall not at any time exceed twelve (12) consecutive hours, or to be on duty for more than sixteen (16) hours in the aggregate in any twenty-four (24) hour period. At least eight (8) hours shall be allowed them off duty before said engineers, firemen, conductors, trainmen, operators, and agents acting as operators, are again ordered or required to go on duty; provided, however, that nothing in this section shall be construed to allow any engineer, fireman, conductor, or trainman to desert his locomotive or train in case of accident, storms, wrecks, washouts, snow blockade, or any unavoidable delay arising from like causes, or to allow said engineer, fireman, conductor, or trainman to tie up any passenger or mail train between terminals.

History: En. Sec. 1, Ch. 5, L. 1907; Sec. 1741, Rev. C. 1907; re-en. Sec. 3081, R. C. M. 1921; amd. Sec. 1, Ch. 206, L. 1969.

Amendments

The 1969 amendment deleted "steam" before "railroads" at the beginning of the first sentence and reduced maximum con-

secutive hours of labor from sixteen to twelve.

Constitutionality

This section and section 41-1124, which purport to regulate maximum number of consecutive working hours of railroad employees, are unconstitutional under supremacy clause of United States constitu-

tion since they are in direct conflict with 45 U.S.C. §§ 61 to 64 which regulate same matter. *Union Pacific R. Co. v. Woodahl*, 308 F Supp 1002.

41-1135. Employment of persons under eighteen as bartenders forbidden. No person under the age of eighteen (18) years of age shall be employed as a bartender, waiter, or waitress whose duty is to serve customers purchasing liquors, beer or wines in any establishment which sells liquors, beer or wines at retail.

<p>History: En. Sec. 1, Ch. 114, L. 1941; amd. Sec. 11, Ch. 240, L. 1971; amd. Sec. 17, Ch. 94, L. 1973.</p>	<p>Amendments The 1971 amendment reduced the minimum age from 21 to 19 years. The 1973 amendment reduced the minimum age from 19 to 18 years.</p>
---	--

41-1136. Penalty. Any retail vendor of liquors, beer or wines who employs any such person under the age of eighteen (18) years is guilty of a misdemeanor.

<p>History: En. Sec. 2, Ch. 114, L. 1941; amd. Sec. 12, Ch. 240, L. 1971; amd. Sec. 18, Ch. 94, L. 1973.</p>	<p>Amendments The 1971 amendment reduced the specified age from 21 to 19 years. The 1973 amendment reduced the specified age from 19 to 18 years.</p>
---	--

CHAPTER 12—APPRENTICESHIP COUNCIL AND CONTRACTS

Section 41-1201. Apprenticeship council.
41-1202. Duties of state apprenticeship council.

41-1201. Apprenticeship council. (a) The governor of the state of Montana shall appoint an apprenticeship council, which shall be a part of the department of labor and industry, and shall consist of six (6) members, three (3) of whom shall be appointed from and be representative of active employers employing persons in recognized apprenticeable trades, and three (3) of whom shall be appointed from and be representative of active employee organizations whose members are employed in recognized apprenticeable trades. The terms of office of the members of the apprenticeship council first appointed by the governor of the state of Montana shall be as follows: One (1) representative each of employers and employees shall be appointed for one (1) year, two (2) years and three (3) years respectively. After the expiration of the original terms, each member shall be appointed by the governor of the state of Montana for a term of three (3) years. Each member shall hold office until his successor is appointed and has qualified, and any vacancy shall be filled by appointment by the governor of the state of Montana for the unexpired portion of the term. The commissioner of labor and industry, the state official who has been designated by the state board for vocational education as being in charge of trade and industrial education and the state official who has immediate charge of the state public employment service shall be ex officio members of said council without vote. The council shall elect a chairman and vice-chairman from its voting membership, one (1) of which shall be a representative of employers and one (1) shall be a representative of employees, and each shall hold office for a term of one (1) year and until his successor is elected.

(b) and (c) * * * [Same as parent volume.]

(d) A compensation of fifteen dollars (\$15) plus travel expenses, as provided for in sections 59-538, 59-539, and 59-801, shall be paid each voting member of the state apprenticeship council, or their authorized representatives, while in official travel status and while attending official meetings for each whole or part of any calendar day. Such voting members, or their representatives, shall be reimbursed a mileage rate and the same is paid other state officials or state employees, for use of personally owned vehicles to attend official meetings from any point in the state of Montana to the place of meeting in Montana and return. A maximum of three hundred dollars (\$300) shall be the limitation for the combined per diem, expenses and mileage payments as provided for herein, for each voting member of said council, or their representatives, during the twelve (12) consecutive month period of any fiscal year from July first of one year to June thirtieth of the next following year.

(e) The commissioner of labor and industry may, subject to the approval of the appointed members of the council, appoint a director of apprenticeship and such other clerical, technical and professional staff as shall be necessary to carry out the provisions of this act. The director of apprenticeship shall serve as the secretary of the council, without a vote.

History: En. Sec. 1, Ch. 149, L. 1941; amd. Sec. 1, Ch. 99, L. 1947; amd. Sec. 1, Ch. 183, L. 1957; amd. Sec. 1, Ch. 160, L. 1963; amd. Sec. 16, Ch. 439, L. 1975.

Amendments

The 1963 amendment completely re-wrote subsection (a), for previous version of which see parent volume; and added subsection (e).

The 1975 amendment substituted "compensation" for "per diem" at the begin-

ning of subsection (d); substituted "travel expenses, as provided for in sections 59-538, 59-539 and 59-801" in subsection (d) for "actual and necessary expenses for meals and lodging, such expenses not to exceed that paid other state officials or employees"; and made minor changes in style.

Cross-References

Council abolished and functions transferred, sec. 82A-1002(2).

41-1202. Duties of state apprenticeship council. The state apprenticeship council by a majority vote, shall:

(1) encourage and promote the making of apprenticeship agreements conforming to the standards established by or in accordance with this act;

(2) register such apprenticeship agreements as are in the best interests of the apprenticeship and conform to the standards established by or in accordance with this act;

(3) keep a record of apprenticeship agreements and upon performance thereof issue certificates of completion of apprenticeship;

(4) terminate or cancel any apprenticeship agreements in accordance with the provisions of such agreements; and who

(5) may act to bring about the settlement of differences arising out of the apprenticeship agreement where such differences cannot be adjusted locally or in accordance with the established trade procedure.

Related and supplemental instruction for apprentices, co-ordination of instruction with job experiences, and the selection and training of

teachers and co-ordinators for such instruction shall be the responsibility of state and local boards responsible for vocational education.

History: En. Sec. 2, Ch. 149, L. 1941; amd. Sec. 2, Ch. 183, L. 1957; amd. Sec. 2, Ch. 160, L. 1963.

sentence which read, "The voting members of the apprenticeship council are authorized to appoint such other personnel as may be necessary to aid the apprenticeship council in the execution of their functions under this act."

Amendment

The 1963 amendment deleted a final

CHAPTER 13—PAYMENT OF WAGES AND PROTECTION OF DISCHARGED EMPLOYEES

- Section 41-1301. Payment of wages.
- 41-1302. Penalty for failure to pay wages at times specified in law.
- 41-1303. Employees separated from employment before payday—wages, when payable.
- 41-1304. Period within which employee may recover penalties.
- 41-1314.1. Enforcement.
- 41-1314.2. Authority to take wage assignments.
- 41-1314.3. Disposition of wages.
- 41-1314.4. Court enforcement of commissioner's determination.
- 41-1325. [Transferred from Title 94.]
- 41-1326. Short title.
- 41-1327. Purpose.
- 41-1328. Reciprocal agreements for collection of wages.
- 41-1329. Actions in other states for collections of claims—assignments for collection.
- 41-1330. Claims assigned by other states—actions—collection.
- 41-1331. Limitations.

41-1301. (3084) **Payment of wages.** Definitions for the purpose of this act.

(1) * * * [Same as parent volume.]

(2) Every employer of labor in the state of Montana, shall pay to each of his employees the wages earned by such employees in lawful money of the United States, or checks on banks convertible into cash on demand at the full face value thereof, and no person for whom labor has been performed shall withhold from any employee any wages earned or unpaid for a longer period than ten (10) business days after the same became due and payable; provided, however, reasonable deductions may be made for board, room, and other incidentals supplied by the employer, whenever such deductions are a part of the conditions of employment, or other deductions provided for by law; provided further, that if at such time of payment of wages any employee shall be absent from the regular place of labor, he shall be entitled to such payment at any time thereafter. Provisions of this section shall not apply to any professional, supervisory or technical employees, who by custom, receive their wages earned at least once monthly.

(3) The following are the definitions used for the purpose of this act:

(a) "Employ" means permit or suffer to work.

(b) "Employer" includes any individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons, acting directly or indirectly in the interest of an employer in relation to an employee, but shall not include the United States.

(c) to (e) * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 11, L. 1919; re-en. Sec. 3084, R. C. M. 1921; amd. Sec. 1, Ch. 169, L. 1941; amd. Sec. 1, Ch. 64, L. 1975.

Amendments

The 1975 amendment deleted "at least twice in each month" after "shall pay * * * wages earned by such employees" near the beginning of subsection (2); increased the maximum allowable period for withholding wages from five days to ten business days, in subsection (2); and deleted "the state of Montana or any legal subdivision thereof" after "United States" at the end of subdivision (3)(b).

Attorney Fees

Attorney fees may not be recovered in judgment for wages taken against the state government nor any of its subdivisions, including a school district, since these are expressly excluded from the

definition of employer under subdivision (3)(b). *Bitney v. School District No. 44*, — M —, 535 P 2d 1273.

Bonus

Yearly bonus of percentage of gross income of veterinary clinic was part of the wages of a veterinary employee. *Hammill v. Young*, — M —, 540 P 2d 971.

Professional Employee

Although veterinarian who worked in a clinic was a professional person, he was an employee within the meaning of this act. *Hammill v. Young*, — M —, 540 P 2d 971.

The professional employee exclusion of this act applies only to the requirement of bimonthly payment of wages, and not to parts of the act pertaining to the penalty and attorney fee provisions. *Hammill v. Young*, — M —, 540 P 2d 971.

41-1302. (3085) Penalty for failure to pay wages at times specified in law. Any employer, as such employer is defined in this act, who fails to pay any of his employees, as provided in the preceding or following sections, or violates any other provision of this act, shall be guilty of a misdemeanor. A penalty shall also be assessed against and paid by such employer and become due such employee as follows:

A sum equivalent to the fixed amount of five (5%) per cent of the wages due and unpaid, shall be assessed for each day, except Sundays and legal holidays, upon which such failure continues after the day upon which such wages were due, except that such failure shall not be deemed to continue more than twenty (20) days after the date such wages were due.

It shall be the duty of the commissioner of labor to inquire diligently for any violations of this act, and to institute actions for the collection of unpaid wages and for the penalties provided for herein, in such cases as he may deem proper, and to enforce generally the provisions of this act.

Nothing herein contained shall be construed to limit the authority of the county attorney of any county of the state of Montana to prosecute actions, both civil and criminal, for such violations of this act as may come to his knowledge, or to enforce the provisions hereof independently and without specific direction of the commissioner of labor.

History: En. Sec. 2, Ch. 11, L. 1919; re-en. Sec. 3085, R. C. M. 1921; amd. Sec. 2, Ch. 169, L. 1941; amd. Sec. 1, Ch. 40, L. 1967.

Amendments

The 1967 amendment extended the application of the first sentence to violations of the entire act; substituted the present second sentence for "A penalty shall also attach to such employer and

become due such employee as follows: A sum equivalent to a penalty of five (5%) per cent of the wages due and not paid, as herein provided, as liquidated damages, and such penalty shall attach and suit may be brought in any court of competent jurisdiction to recover the same and the wages due"; inserted "for the collection of unpaid wages and for the" in the next to last paragraph; and made minor changes in phraseology.

Professional Employee

Veterinarian who was employed in a clinic was entitled to the statutory penalty for nonpayment of his bonus, since

the exclusion of professional employees applies only to the requirement of bi-monthly payment of wages. *Hammill v. Young*, — M —, 540 P 2d 971.

41-1303. (3086) Employees separated from employment before pay-day—wages, when payable. Whenever any employee is separated from the employ of any such employer, then all the unpaid wages of such employee shall become due and payable within three (3) days, either through the regular pay channels or by mail if requested by the employee; provided however, that where an employer's payroll checks originate at an office outside the state of Montana the time provided herein for payment of wages shall be extended for three (3) additional days.

History: En. Sec. 3, Ch. 11, L. 1919; amd. Sec. 1, Ch. 66, L. 1921; re-en. Sec. 3086, R. C. M. 1921; amd. Sec. 3, Ch. 169, L. 1941; amd. Sec. 2, Ch. 40, L. 1967.

Amendments

The 1967 amendment rewrote this section. For previous text, see parent volume.

41-1304. (3087) Period within which employee may recover penalties. Any employee may recover all such penalties as are provided for the violation of section 41-1302, which have accrued to him, at any time within eighteen (18) months succeeding such default or delay in the payment of such wages.

History: En. Sec. 4, Ch. 11, L. 1919; re-en. Sec. 3087, R. C. M. 1921; amd. Sec. 1, Ch. 234, L. 1973.

Amendments

The 1973 amendment extended the time for recovery of penalties from six months to eighteen months.

41-1306. (3089) Judgment for wages shall include attorney's fee.

Exceptions to Recovery

Attorney fees may not be recovered in judgment for wages taken against the state government or any of its subdivisions, including a school district, since these are expressly excluded from the definition of employer under section 41-1301(3)(b). *Bitney v. School District No. 44*, — M —, 535 P 2d 1273.

contract, even though not included in plaintiff's memorandum of costs, since the award was made directly to attorney. *Cartwright v. Joyce*, 155 M 478, 473 P 2d 515.

Professional Employee

The exclusion of the professional employees under this act was limited to the statutory requirement of bimonthly payment of wages, and thus veterinarian suing for nonpayment of bonus was entitled to recovery of attorney fees. *Hammill v. Young*, — M —, 540 P 2d 971.

Failure To Include in Memorandum

Award of attorney fees was proper in employee's action to recover for services rendered as bookkeeper under an implied

41-1314.1. Enforcement. The commissioner or his authorized representatives are empowered to enter and inspect such places, question such employees, and investigate such facts, conditions, or matters as they may deem appropriate, to determine whether any person has violated any provision of this act or any rule or regulation issued hereunder or which may aid in the enforcement of the provisions of this act.

The commissioner or his authorized representatives shall have power to administer oaths and examine witnesses under oath, issue subpoenas, compel the attendance of witnesses, and the production of papers, books, accounts, records, payrolls, documents, and testimony, and to take depositions and affidavits in any proceeding before the commissioner.

History: En. Sec. 3, Ch. 40, L. 1967.

Title of Act

An act amending sections 41-1302 and 41-1303, R. C. M. 1947, relating to time for payment of wages; authorizing the commissioner of labor to investigate violations; and authorizing said commissioner to accept assignments of wage claims and institute proceedings to enforce such claims.

Duty of Labor Commissioner

After taking assignment of unpaid wages, the commissioner of labor has a clear legal duty to hold a hearing on the matter since the Montana department of labor and industry in its administrative code has charged the labor standards division with the duty of enforcing Montana labor laws, and the determination of the commissioner, to be judicially enforceable, must be made pursuant to a hearing. *Burgess v. Softich*, — M —, 535 P 2d 178.

41-1314.2. Authority to take wage assignments. Whenever the commissioner determines that one or more employees have claims for unpaid wages, he shall, upon the written request of the employee, take an assignment of the claim in trust for such employee, and may maintain any proceeding appropriate to enforce the claim, including liquidated damages pursuant to this act. With the written consent of the assignor, the commissioner may settle or adjust any claim assigned pursuant to this section.

Any judgment for the plaintiff in a proceeding pursuant to this act shall include all costs reasonably incurred in connection with the proceeding, including attorneys' fees. If the proceeding is maintained by the commissioner, no court costs or fees shall be required of him, nor shall he be required to furnish any bond or other security that might otherwise be required in connection with any phase of the proceeding.

The commissioner is authorized to issue, amend, and enforce rules and regulations for the purpose of carrying out the provisions of the act.

History: En. Sec. 4, Ch. 40, L. 1967.

Compromise Not a Defense

Employer may not compromise minimum wage claims with employees and then establish that compromise as a defense to proceedings seeking enforcement of minimum wage laws; failure of commissioner to obtain assignments of wage claims from all employees was not fatal to his authority to act on their behalf, and nonassigned claims could not be settled by

employees themselves. *State ex rel. Neiss v. District Court, Thirteenth Judicial Dist., Yellowstone County*, — M —, 511 P 2d 979.

Refusal to Hold Hearing

Commissioner of labor did not have discretion to ignore wage claim or reject it without a hearing and making a proper determination. *Burgess v. Softich*, — M —, 535 P 2d 178.

41-1314.3. Disposition of wages. (1) The commissioner of labor and industry shall deposit wages collected by him under Title 41, chapters 13 and 23, R. C. M. 1947, into the agency fund and shall attempt to make payment of wages to the entitled person. Wages deposited into the agency fund are not interest bearing.

(2) Wages collected by the commissioner of labor and industry remaining unclaimed for a period of more than two (2) years from the date of collection shall be forfeited to the state general fund.

History: En. 41-1314.3 by Sec. 1, Ch. 164, L. 1974.

Title of Act

An act providing for the disposition of wages collected by the commissioner of labor and industry.

41-1314.4. Court enforcement of commissioner's determination. A determination by the commissioner of labor and industry made after a hearing as provided for in Title 41, chapters 13 and 23, R. C. M. 1947, may be enforced by application by the commissioner to a district court for an order or judgment enforcing the determination, if the time provided to initiate judicial review by the employer has passed. The commissioner shall apply to the district court where the employer has its principal place of business, or in the first judicial district of the state. A proceeding under this section is not a review of the validity of the commissioner's determination.

History: En. 41-1314.4 by Sec. 1, Ch. 197, L. 1974. of determinations made by the commissioner of labor and industry as provided for in Title 41, Chapters 13 and 23, R. C. M. 1947.

Title of Act

An act to provide for the enforcement

41-1325. [Transferred from Title 94.]

Compiler's Notes

This section was originally numbered 94-3555. Section 29, Ch. 513, Laws of 1973, renumbered it to appear in this

title. Because there has been no change in text, the section is not reprinted here but may be found in bound Volume Eight as sec. 94-3555.

41-1326. Short title. This act may be cited as "The Reciprocal Agreement for Collection of Wages Act of 1977".

History: En. 41-1326 by Sec. 1, Ch. 216, L. 1977.

Title of Act

The reciprocal agreement for collection of wages act of 1977.

41-1327. Purpose. The purpose of this act is to provide for a method of reciprocal enforcement in other states of Montana's wage payment laws contained in Title 41, chapter 13, and to provide for reciprocal enforcement in Montana of similar wage payment laws of other states.

History: En. 41-1327 by Sec. 2, Ch. 216, L. 1977.

41-1328. Reciprocal agreements for collection of wages. The department of labor and industry may enter into reciprocal agreements with the labor department or corresponding agency of another state or with the person, board, officer, or commission authorized to act for and on behalf of the department or agency for the collection in the other state of claims or judgments for wages and other demands based upon claims previously assigned to the department of labor and industry.

History: En. 41-1328 by Sec. 3, Ch. 216, L. 1977.

41-1329. Actions in other states for collections of claims—assignments for collection. The department of labor and industry may, to the extent provided by a reciprocal agreement entered into pursuant to 41-1328 or by the laws of another state, maintain actions in the courts of another state for the collection of claims for wages, judgments, and other demands and may assign the claims, judgments, and demands to the labor depart-

ment or agency of another state for collection to the extent permitted or provided for by the laws of the other state or by reciprocal agreement.

History: En. 41-1329 by Sec. 4, Ch. 216, L. 1977.

41-1330. Claims assigned by other states—actions—collection. The department of labor and industry may, upon the written request of the labor department or other corresponding agency of another state or a person, board, officer, or commission of the other state authorized to act for and on behalf of the labor department or corresponding agency, maintain actions in the courts of this state upon assigned claims for wages, judgments, and demands arising in the other state in the same manner and to the same extent that these actions by the department of labor and industry are authorized when arising in this state. However, these actions may be commenced and maintained only in those cases where the other state, by appropriate legislation or by reciprocal agreement, extends a like comity to similar cases arising in this state.

History: En. 41-1330 by Sec. 5, Ch. 216, L. 1977.

41-1331. Limitations. Limitations regarding the amount of wages covered by a reciprocal agreement or the time during which the wages are accrued shall be the limitations imposed by the laws of the state originating the action.

History: En. 41-1331 by Sec. 6, Ch. 216, L. 1977.

Separability Clause

Section 7 of Ch. 216, Laws 1977 read "If a part of this act is invalid, all valid

parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

CHAPTER 14—EMPLOYMENT AGENCIES, REGULATION

- Section 41-1417. Short title.**
41-1418. Definitions.
41-1419. Records to be kept—contents—examination by director.
41-1420. Contract—contents—applicant entitled to copy.
41-1421. Director's approval required before using contract—no fee for referral to state employment office or hiring hall.
41-1422. Reconfirmation of job opening.
41-1423. Administration by director—rules and regulations—powers.
41-1424. Conducting business without license a misdemeanor.
41-1425. Bond of licensee—cash deposit.
41-1426. Application for license—contents.
41-1427. Expiration of license.
41-1428. Director's consent necessary before transferring license—changes in management.
41-1429. Grounds for denial, suspension, or revocation of license.
41-1430. License fees.
41-1431. When can agency charge fee from applicant.
41-1431.1. Maximum fee.
41-1432. Return of excessive fees.
41-1433. Additional regulatory rules.
41-1434. Reference to prosecuting officials for enforcement.
41-1434.1. Filing of complaints.
41-1435. Written assurance of discontinuance.
41-1436. Civil penalty for violating court order.

41-1437. Jurisdiction over nonresidents.

41-1438. Provisions exclusive—authority of political subdivisions not affected—disposition of license fees.

41-1401 to 41-1416. (4157 to 4172) Repealed.

Repeal Sections 41-1401 to 41-1416 (Secs. 1 to 16, Ch. 225, L. 1919), relating to employment agencies, were repealed by Sec. 23, Ch. 430, Laws 1971.

41-1417. Short title. This act shall be known and cited as "The Employment Agency Act."

History: En. Sec. 1, Ch. 430, L. 1971. R. C. M. 1947, concerning the regulation of private employment agencies including provision for penalties for the violation of such regulations.

Title of Act

An act replacing chapter 14, Title 41,

41-1418. Definitions. Unless a different meaning is clearly required by the context, the following words and phrases, as hereinafter used in this chapter, shall have the following meanings:

(1) "Employment agency" is synonymous with "agency" and shall mean any business in which any part of the business's gross or net income is derived from a fee received from applicants, and in which any of the following activities are engaged in:

(a) The offering, promising, procuring or attempting to procure employment for applicants; or

(b) The giving of information regarding where and from whom employment may be obtained.

In addition, the term "employment agency" shall mean and include any person, bureau, organization or school which for profit, by advertisement or otherwise; offers, as one of its main objects or purposes, to procure employment for any person who pays for its services, or which collects tuition, or charges for service of any nature, where the main object of the person paying the same is to secure employment. The term "employment agency" shall not include labor union organizations, temporary service contractors proprietary schools, or the Montana state employment agency.

(2) "Temporary service contractors" shall mean any person, firm, association, or corporation conducting a business which consists of employing individuals directly for the purpose of furnishing such individuals on a part-time or temporary basis to others.

(3) "Employer" means any person, firm, corporation, partnership, or association employing or seeking to enter into an arrangement to employ a person through the medium or service of an employment agency.

(4) "Applicant," except when used to describe an applicant for an employment agency license, means any person, whether employed or unemployed, seeking or entering into any arrangement for his employment or change of his employment through the medium or service of an employment agency.

(5) "Person" includes an individual, a firm, a corporation, partnership or association.

(6) "Director" shall mean the commissioner of the department of labor and industries.

History: En. Sec. 2, Ch. 430, L. 1971.

41-1419. Records to be kept — contents — examination by director. Each employment agency shall keep records of all services rendered employers and applicants. These records shall contain the name and address of the employer by whom the services were solicited; the name and address of the applicant; kind of position ordered by the employer; kind of position accepted by the applicant; probable duration of the employment, if known; rate of wage or salary to be paid the applicant; amount of the employment agency's fee; dates and amounts of refund if any, and reason for such refund; and the contract agreed to between the agency and applicant.

The director shall have authority to demand and to examine, at the employment agency's regular place of business, all books, documents, and records in its possession for inspection. Unless otherwise provided by rules or regulations adopted by the director, such records shall be maintained for a period of three (3) years from the date in which they are made.

History: En. Sec. 3, Ch. 430, L. 1971.

41-1420. Contract—contents—applicant entitled to copy. An employment agency shall provide each applicant with a copy of the contract between the applicant and employment agency. Such contract shall contain the following:

(1) The name, address, and telephone number of the employment agency;

(2) Trade name if any;

(3) The date of the contract;

(4) The name of the applicant;

(5) The amount of the fee to be charged the applicant;

(6) A notice in eight-point bold face type or larger directly above the space reserved in the contract for the signature of the buyer. The caption, "NOTICE TO APPLICANT — READ BEFORE SIGNING" shall precede the body of the notice and shall be in ten-point bold face type or larger. The notice shall read as follows:

"This is a contract. If you accept employment with any employer through (name of employment agency) you will be liable for the payment of the fee as set out above. Do not sign this contract before you read it or if any spaces intended for the agreed terms are left blank. You are entitled to a copy of this contract at the time you sign it."

History: En. Sec. 4, Ch. 430, L. 1971.

41-1421. Director's approval required before using contract—no fee for referral to state employment office or hiring hall. Prior to using any contract in the transaction of its business with applicants, each employment agency shall obtain the director's approval for the use of such con-

tract. The director shall disapprove any proposed contract which either tends to be or is vague, deceitful, misrepresentative or attempts to charge an unreasonable fee or is in violation of this act. No fee shall be charged an applicant referred to a state employment office or any organization having exclusive hiring hall procedures as provided in the National Labor Relations Act.

History: En. Sec. 5, Ch. 430, L. 1971.

41-1422. Reconfirmation of job opening. Prior to referring an applicant with the prospective employer for employment, the employment agency shall reconfirm that the job opening does still exist and document this on the job order.

History: En. Sec. 6, Ch. 430, L. 1971; amd. Sec. 2, Ch. 237, L. 1975.

Amendments

The 1975 amendment rewrote this section which read "No employment agency

shall send any applicant on an interview with a prospective employer without first having obtained, either orally or in writing, a bona fide request from such employer for the interview."

41-1423. Administration by director—rules and regulations—powers. [1] The director shall administer the provisions of this act and shall issue from time to time reasonable rules and regulations for enforcing and carrying out the provisions and purposes of this act.

(2) The director shall have power to compel the attendance of witnesses by the issuance of subpoenas, to administer oaths, and to take testimony and proofs concerning all matters pertaining to the administration of this act.

(3) The director shall have supervisory and investigative authority over all employment agencies. Upon receiving a complaint against any employment agency, the director shall have the right to examine all books, documents, or records in its possession. In addition, the director may examine the office or offices where business is or shall be conducted by such agency.

History: En. Sec. 7, Ch. 430, L. 1971.

41-1424. Conducting business without license a misdemeanor. It shall be a misdemeanor for any person to conduct an employment agency business in this state unless he has an employment agency license issued pursuant to the provisions of this act.

History: En. Sec. 8, Ch. 430, L. 1971.

41-1425. Bond of licensee—cash deposit. Before conducting any business as an employment agency each licensee shall file with the director a surety bond in the sum of two thousand dollars (\$2,000) running to the state of Montana, for the benefit of any person injured or damaged as a result of any violation by the licensee or his agent of any of the provisions of this act or of any rule or regulation adopted by the director pursuant to section 41-1423.

History: En. Sec. 9, Ch. 430, L. 1971; amd. Sec. 3, Ch. 237, L. 1975.

Amendments

The 1975 amendment deleted a second

paragraph which read "In lieu of the surety bond required by this section the license applicant may file with the director a cash deposit or other negotiable security acceptable to the director: provided, however, if the license applicant has filed a cash deposit, the director shall

deposit such funds in a special trust savings account in a commercial bank, mutual savings bank, or saving and loan association and shall pay annually to the depositor the interest derived from such account"; and made a minor change in style.

41-1426. Application for license—contents. (1) Every applicant for an employment agency's license or a renewal thereof shall file with the director a written application stating the name and address of the applicant; the street and number of the building in which the business of the employment agency is to be conducted; the name of the person who is to have the general management of the office; the name under which the business of the office is to be carried on; whether or not the applicant is pecuniarily interested in the business to be carried on under the license; shall be signed by the applicant and sworn to before a notary public; and shall identify anyone holding over twenty per cent (20%) interest in the agency. If the applicant is a corporation, the application shall state the names and addresses of the officers and directors of the corporation, and shall be signed and sworn to by the president and secretary thereof. If the applicant is a partnership, the application shall also state the names and addresses of all partners therein, and shall be signed and sworn to by all of them. The application shall also state whether or not the applicant is, at the time of making the application, or has at any previous time been engaged in or interested in or employed by anyone engaged in the business of an employment agency.

(2) All applications for employment agency licenses shall be accompanied by a copy of the form of contract to be used between the agency and the applicant.

History: En. Sec. 10, Ch. 430, L. 1971.

41-1427. Expiration of license. An employment agency license shall expire June 30.

History: En. Sec. 11, Ch. 430, L. 1971.

41-1428. Director's consent necessary before transferring license—changes in management. No license granted pursuant to this act shall be transferable without the consent of the director. No employment agency shall permit any person not mentioned in the license application to become connected with the business as an owner, member, officer, or director without the consent of the director. Consent may be withheld for any reason for which an original application for a license might have been rejected, if the person in question had been mentioned therein.

History: En. Sec. 12, Ch. 430, L. 1971.

41-1429. Grounds for denial, suspension, or revocation of license. The director may by order deny, suspend or revoke the license of any employment agency if he finds that the applicant or licensee:

(1) Was previously the holder of a license issued under this act, which was revoked for cause and never reissued by the director, or

which license was suspended for cause and the terms of the suspension have not been fulfilled;

(2) Has been found guilty of any felony within the past five (5) years involving moral turpitude, or for any misdemeanor concerning fraud or conversion, or suffering any judgment in any civil action involving willful fraud, misrepresentation or conversion;

(3) Has made a false statement of a material fact in his application or in any data attached thereto;

(4) Has violated any provisions of this act, or failed to comply with any rule or regulation issued by the director pursuant to this act.

History: En. Sec. 13, Ch. 430, L. 1971.

41-1430. License fees. The following fees shall be charged by the director to those parties licensed as employment agencies: original applications, one hundred dollars (\$100); renewal per year, one hundred dollars (\$100); branch license, both original and renewal, one hundred dollars (\$100); transfer of license, twenty-five dollars (\$25); approval of amended or new contracts, fifteen dollars (\$15) per contract.

History: En. Sec. 14, Ch. 430, L. 1971.

41-1431. When can agency charge fee from applicant. No employment agency shall charge or accept a fee or other consideration from an applicant without complying with the terms of a written contract as specified in section 4 [41-1420] of this act, and then only after such agency has been responsible for referring such job applicant to an employer or such employer to a job applicant and where as a result thereof such job applicant has been employed by such employer.

History: En. Sec. 15, Ch. 430, L. 1971.

41-1431.1. Maximum fee. (1) No employment agency shall impose a fee in excess of ten (10) per cent of the first month's gross income paid to any person placed for employment which lasts no longer than ninety (90) days if employment is terminated by the employer through no fault of the applicant. If the applicant resigns after starting employment or is discharged through his own fault after thirty (30) days of employment the applicant shall pay the full fee provided that an adjustment is not reached within fifteen (15) days from the last day worked. If the applicant resigns or terminates within thirty (30) days, the applicant shall not pay in excess of ten per cent (10%) of the total gross income received.

(2) No employment agency shall impose a fee in excess of the percentage of the annual income based on the first month's gross income to any person placed for employment as provided for in the following schedule:

Schedule of Placement Fees

Monthly Income	Per Cent of First Full Month's Gross Income
Less than \$200	30%
\$200 to \$224	35%
\$225 to \$299	40%

\$300 to \$349	50%
\$350 to \$499	60%
\$500 to \$649	65%
\$650 to \$799	70%
\$800 and up	75%

Cost of doing business increases are to be reviewed by the department of labor biannually and any adjustments in rates may be approved by the department accordingly.

(3) Where an applicant for employees or employment who has paid a fee fails to secure or refuses to accept employees or employment, such fee shall be returned in cash within seven (7) days after demand. Where, due to no fault of such applicant or because the employee or employment is other than as represented by the employment agency, employment is discontinued within thirty (30) days, then all fees paid pursuant to subsection[s] (1) and (2) of this section by such applicant in excess of the applicable maximum for the period worked shall be returned in cash within seven (7) days after demand.

History: En. 41-1431.1 by Sec. 1, Ch. 237, L. 1975.

Title of Act

An act regulating the fees of private employment agencies; amending section

41-1422, R. C. M. 1947, relating to employer interview requests to private employment agencies; and amending section 41-1425, R. C. M. 1947, relating to bonds for private employment agencies.

41-1432. Return of excessive fees. Any employment agency which collects, receives, or retains a fee or other payment contrary to the provisions of this act or to the rules or regulations adopted pursuant to this act shall return the excessive portion of the fee within seven (7) days after receiving a demand therefor from the director.

History: En. Sec. 16, Ch. 430, L. 1971.

41-1433. Additional regulatory rules. In addition to the other provisions of this act the following rules shall govern each and every employment agency:

(1) Every license or a verified copy thereof shall be displayed in a conspicuous place in each office of the employment agency;

(2) No fee shall be solicited or accepted as an application or registration fee by any employment agency solely for the purpose of being registered as an applicant for employment;

(3) No licensee or agent of the licensee shall solicit, persuade, or induce an employee to leave any employment in which the licensee or agent of the licensee has placed the employee; nor shall any licensee or agent of the licensee persuade or induce or solicit any employer to discharge any employee;

(4) No employment agency shall knowingly cause to be printed or published a false or fraudulent notice or advertisement for obtaining work or employment. All advertising by a licensee shall signify that it is an employment agency solicitation;

(5) No licensee shall refer an applicant to an employer where there is a strike or lockout at the place of proposed employment, if such licensee has knowledge that such condition exists;

(6) No licensee or agent of a licensee shall directly or indirectly split, divide, or share with an employer any fee, charge, or compensation received from any applicant who has obtained employment with such employer or with any other person connected with the business of such employer;

(7) When an applicant is referred to the same position by two licensees, the fee shall be paid to the licensee who first contacted the applicant concerning the specific opening: provided, that he has given the name of the employer to the applicant and has arranged an interview or submitted a resume to the employer within ten (10) days of such contract.

History: En. Sec. 17, Ch. 430, L. 1971.

41-1434. Reference to prosecuting officials for enforcement. The director may refer such evidence as may be available to him concerning violations of this act or of any rule or regulation adopted hereunder to the attorney general or the prosecuting attorney of the county wherein the alleged violation arose, who may, in their discretion, with or without such a reference, in addition to any other action they might commence, bring an action in the name of the state against any person to restrain and prevent the doing of any act or practice prohibited by this act.

History: En. Sec. 18, Ch. 430, L. 1971.

41-1434.1. Filing of complaints. Any complaints filed with the department of labor shall be sent to that private employment agency involved, or to the Montana Private Employment Agency Association.

History: En. 41-1434.1 by Sec. 4, Ch. 237, L. 1975.

41-1435. Written assurance of discontinuance. In the enforcement of this act, the attorney general and/or any said prosecuting attorney may accept an assurance of discontinuance from any person deemed in violation of any provisions of this act. Any such assurance shall be in writing and shall be filed with and subject to the approval of the superior court of the county in which the alleged violator resides or has his principal place of business.

History: En. Sec. 19, Ch. 430, L. 1971.

41-1436. Civil penalty for violating court order. Any person who violates the terms of any court order or temporary or permanent injunction issued pursuant to this act, shall forfeit and pay a civil penalty of not more than two thousand dollars (\$2,000). For the purpose of this section the court issuing any injunction shall retain continuing jurisdiction and in such cases the attorney general and/or the prosecuting attorney acting in the name of the state may petition for the recovery of civil penalties.

History: En. Sec. 20, Ch. 430, L. 1971.

41-1603. Commissioner of labor and industry—term—salary—oath.

The term of office of the commissioner of labor and industry shall be four (4) years and until his successor is appointed and qualified. The commissioner shall receive an annual salary in such amount as may be specified by the legislature in the appropriation to the department of labor and industry. Before entering on the duties of his office, he must take and subscribe to the oath of office prescribed by the Montana Constitution.

History: En. Sec. 3, Ch. 177, L. 1951; amd. Sec. 1, Ch. 27, L. 1957; amd. Sec. 2, Ch. 225, L. 1963; amd. Sec. 20, Ch. 177, L. 1965; amd. Sec. 2, Ch. 237, L. 1967; amd. Sec. 19, Ch. 100, L. 1973; amd. Sec. 6, Ch. 343, L. 1977.

Amendments

The 1963 amendment substituted a provision for a maximum salary of \$7,500 for a provision fixing the salary at \$6,000.

The 1965 amendment deleted an opening clause relating to the term of office of the commissioner appointed in 1951; deleted "appointed thereafter" after "commissioner of labor and industry" in the first sentence; and deleted "and execute an official bond in the amount of one thousand dollars (\$1,000)" from the end of the section.

The 1967 amendment substituted the second, third and fourth sentences for a provision in the former section fixing the maximum salary at \$7,500; and made

minor changes in punctuation and phraseology.

The 1973 amendment deleted "section 1, article XIX of" before "the Montana constitution" at the end of the section.

The 1977 amendment substituted "legislature" for "legislative assembly" near the middle of the section; and deleted the former third, fourth and fifth sentences reading "If the legislative assembly does not specify the maximum salary of the commissioner, any increase in the salary of the commissioner must be approved by the board of examiners. Before approving any salary increase, the board of examiners shall review the salaries of comparable positions in Montana state government, other states, and private industry. The salary shall be payable monthly."

Cross-References

Bonds of state officers and employees, sec. 6-105 et seq.

Commissioner continuing as head of new department, sec. 82A-1001.

41-1605. Duties of department. (1) The department of labor and industry shall be charged with the duty of enforcing all the laws of Montana relating to hours of labor, conditions of labor, prosecution of employers who default in payment of wages, protection of employees, all laws relating to child labor regulating the employment of children in any manner, and to administer the laws of the state relating to free employment offices, and all state labor laws enacted by legislation.

(2) In discharging the duties imposed upon the department of labor and industry, the commissioner of labor and industry or his authorized representative may administer oaths, examine witnesses under oath, take depositions or cause same to be taken, deputize any citizen eighteen (18) years of age or older to serve subpoenas upon witnesses, and issue subpoenas for the attendance of witnesses before him in the same manner as for attendance before district courts. The commissioner of labor and industry may likewise cause to be inspected any mine, factory, workshop, smelter, mill, warehouse, elevator, foundry, machine shop, or other industrial establishment. Nothing herein contained shall in any manner confer upon the commissioner of labor and industry the authority to interfere in any manner with the conduct of the matters under the control of the workmen's compensation division, nor shall the commissioner be charged with the duty of enforcing any of the laws of the state of Montana pertaining to the affairs of the workmen's compensation division, nor with the en-

forcement of the safety provisions of the Workmen's Compensation Act. Nothing in this act applies to labor violations pre-empted by federal law or regulation.

History: En. Sec. 5, Ch. 177, L. 1951; amd. Sec. 1, Ch. 451, L. 1975.

lation" at the end of subsection (1); and added subsection (2).

Amendments

The 1975 amendment designated the first paragraph as subsection (1); added "and all state labor laws enacted by legis-

Effective Date

Section 2 of Ch. 451, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved April 16, 1975.

41-1607, 41-1608. Repealed.

Repeal

Sections 41-1607 and 41-1608 (Secs. 9, 10, Ch. 177, L. 1951; Sec. 12, Ch. 80, L. 1961), relating to the annual report of the

department of labor and industry were repealed by Sec. 44, Ch. 93, Laws 1969. For present law, see secs. 82-4001 and 82-4002.

41-1609. Repealed.

Repeal

Section 41-1609 (Sec. 12, Ch. 177, L. 1951), relating to legislative intent in

separating the departments of agriculture and labor and industry, was repealed by Sec. 58, Ch. 100, Laws 1973.

CHAPTER 17—SAFETY CODES

Section 41-1708. Short title.

41-1709. Definitions.

41-1710. Employers to furnish and require safety devices and practices.

41-1711. Employer's duty to provide and maintain safe place of employment.

41-1712. Removal or refusal to use safety devices prohibited.

41-1713. Division's powers—rule-making power—subpoena and other powers.

41-1714. Compelling witnesses to appear in response to subpoena—contempt.

41-1715. Division's power to prescribe safety devices and fix and order safety standards.

41-1716. Notice of hearing on rules and codes.

41-1717. Order directing additions, repairs, and improvements.

41-1718. Notice of violation of safety code, order or rule—penalties for violations—hearings—injunction authorized.

41-1719. Time allowed for compliance with order.

41-1720. Order of closure or for cessation of work where place of employment an immediate menace to life or safety.

41-1721. Judicial review of division's orders, rules or decisions.

41-1722. Application for rehearing of order, decision, or rule of division.

41-1723. Application for rehearing—contents—waiver—copies to adverse parties—procedure where no adverse parties.

41-1724. Resolution of issues on rehearing—notice—disposition.

41-1725. Periodic inspections of hazardous places of employment—report.

41-1726. Workers to notify employers of safety violations—complaint to division—investigation.

41-1727. Code-making power.

41-1728. Variations.

41-1729. General research and review powers of division—power to appoint advisers.

41-1730. Violation of safety provision—misdemeanor.

41-1731. Public contractors subject to act.

41-1732. Effect on existing structures and equipment.

41-1733. Occupational health hazards.

41-1701 to 41-1707. Repealed.

Repeal

Sections 41-1701 to 41-1707 (Secs. 1 to 6, 8, Ch. 193, L. 1951), relating to safety codes of the industrial accident board,

were repealed by Sec. 30, Ch. 341, Laws 1969. For present provisions see sec. 41-1708 et seq.

41-1708. Short title. This act may be cited as the "Montana Safety Act."

History: En. Sec. 1, Ch. 341, L. 1969.

Title of Act

An act to provide a safety code for the state of Montana, establishing a department of safety, providing for a safety director to be appointed by the industrial accident board, providing that the industrial accident board have supervision over

every place of employment and full power to enforce all laws and orders concerning safety in places of employment, prescribing methods for enforcement and administration of this act; amending section 92-101, R. C. M. 1947; and repealing sections 41-1701 through 41-1707, 92-1201 through 92-1210 and 92-1214 through 92-1222, R. C. M. 1947.

41-1709. Definitions. Unless context requires otherwise, in this act:

(1) "Division" means the division of workers' compensation of the department of labor and industry provided for in section 82A-1004.

(2) "Employer" is defined as in section 92-410.1, R. C. M. 1947.

(3) "Code" means a standard body of rules for safety formulated, adopted and issued by the division under the provisions of this act.

(4) "Employee" and "worker" are defined as in section 92-411, R. C. M. 1947.

(5) "Amendment" means such modification or change in a code as shall be intended to be of universal or general application.

(6) "Variation" means a special, limited modification or change in the code which is applicable only to the particular place of employment of the employer or person petitioning for such modification or change.

History: En. Sec. 2, Ch. 341, L. 1969; amd. Sec. 1, Ch. 182, L. 1975.

Amendments

The 1975 amendment substituted the definition of "division" in subdivision (1) for "'Board' means the industrial accident board of the state of Montana"; substituted "section 92-410.1" for "section

92-410" in subdivision (2); substituted "division" for "board" in subdivision (3); and substituted "worker" for "workmen" in subdivision (4).

Cross-References

Board abolished and functions transferred, sec. 82A-1005(1).

41-1710. Employers to furnish and require safety devices and practices. Every employer shall furnish a place of employment which is safe for employees therein, and shall furnish and use, and require the use of, such safety devices and safeguards, and shall adopt and use such practices, means, methods, operations and processes as are reasonably adequate to render the place of employment safe, and shall do every other thing reasonably necessary to protect the life and safety of employees.

History: En. Sec. 3, Ch. 341, L. 1969.

Liability for Violation

Employee of general contractor expanding paper company's facilities was properly denied right to introduce testimony, in suit against paper company, respecting minimum safety standards for construction industry as promulgated by state in-

dustrial accident board since paper company's right to oversee and co-ordinate work of independent contractors did not impose duty on company to ensure that contractor's work would be done in compliance with all various safety codes. Hackley v. Waldorf-Horner Paper Products Co., 149 M 286, 425 P 2d 712.

41-1711. Employer's duty to provide and maintain safe place of employment. An employer who is the owner or lessee of any real property

in this state shall not construct or cause to be constructed or maintained any place of employment that is unsafe.

Every employer who is the owner of a place of employment or lessee thereof, shall repair, and maintain the same as to render it safe.

History: En. Sec. 4, Ch. 341, L. 1969.

41-1712. Removal or refusal to use safety devices prohibited. No person shall remove, displace, damage, destroy or carry off or refuse to use any safety device or safeguard furnished and provided for his use in any employment or place of employment, or interfere in any way with the use thereof by any other person, or interfere with the use of any method or process adopted for the protection of any employee in such employment or place of employment, or fail to do any other thing reasonably necessary to protect the life and safety of such employees.

History: En. Sec. 5, Ch. 341, L. 1969.

41-1713. Division's powers—rule-making power—subpoena and other powers. In the administration of this act the division:

(1) Is vested with full power and jurisdiction over, and shall have such supervision of, every employment and place of employment in this state as may be necessary to enforce and administer all laws and all lawful orders requiring such employment and places of employment to be safe and requiring the protection of the life and safety of every employee in such employment or place of employment.

(2) Shall carry out the provisions of this act. The safety bureau chief shall be a person with at least two (2) years' experience or training in the field of industrial safety.

(3) May adopt and enforce all necessary and reasonable rules and provisions for the purpose of carrying this act into effect and in reference to the investigation of all violations of this act and fix and set the time and place for all hearings which may be necessary or expedient for the purpose of carrying the provisions of this act into effect.

(4) May on its own motion or at the request of others, subpoena witnesses, administer oaths, take depositions and fix the fees and mileage of witnesses and compel the attendance of witnesses and the production of papers, books, accounts, documents and testimony in any inquiry, investigation, hearing or proceeding in any part of this state, and the division shall provide for defraying the expenses thereof.

History: En. Sec. 6, Ch. 341, L. 1969; amd. Sec. 2, Ch. 182, L. 1975.

Amendments

The 1975 amendment substituted "division" for "board" in the preliminary clause and near the end of subdivision (4); substituted the first sentence of subdivision (2) for a sentence reading "Shall establish a department of safety under the

supervision of a safety director, to be appointed by the board, to carry out the provisions of this act"; substituted "safety bureau chief" for "safety director" in the second sentence of subdivision (2); and made minor changes in phraseology.

Cross-References

Industrial accident board abolished and functions transferred, sec. 82A-1005 (1).

41-1714. Compelling witnesses to appear in response to subpoena—contempt. (1) The division or any member thereof, before whom testi-

mony is to be given or produced, in the case of refusal of any witness to attend or testify or produce any papers required by such subpoena, may in applying to the district court in and for the county in which the proceeding is pending show that the witness has been subpoenaed in the manner prescribed and the witness has failed or refused to attend or produce the papers required by the subpoena or has refused to answer questions propounded to him in the course of such proceeding, and ask the court to compel the witness to attend and testify or produce such papers before the division.

(2) The court, upon such application, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court then and there to show cause why the witness has not attended and testified or produced the papers before the division or any member thereof.

(3) A copy of the order shall be served upon the witness.

(4) If it is apparent to the court that the subpoena was regularly issued by the division or member thereof, the court thereupon shall enter an order that the witness appear before the division or member thereof at a time and place to be fixed in such order, and testify and produce the required papers and upon failure to obey the order the witness shall be dealt with as for contempt of court.

History: En. Sec. 7, Ch. 341, L. 1969; and. Sec. 3, Ch. 182, L. 1975. sion" for "board" throughout the section; and substituted "the witness" for "he" in subsection (2).

Amendments

The 1975 amendment substituted "divi-

41-1715. Division's power to prescribe safety devices and fix and order safety standards. The division may, after hearing had upon its own motion or upon complaint, by safety orders, rules or otherwise:

(1) Declare and prescribe what safety devices, safeguards or other means or methods of protection are well adapted to render the employees of every employment and place of employment safe as required by law.

(2) Fix reasonable standards and prescribe, modify and enforce such reasonable orders for the adoption, installation, use, maintenance and operation of safety devices, safeguards and other means or methods of protection, to be as nearly uniform as possible, as may be necessary to carry out all laws and lawful orders relative to the protection of the life and safety of the employees and places of employment.

(3) Fix and order such reasonable standards for the construction, repair and maintenance of places of employment and equipment as shall render them safe.

(4) Require the performance of any other act which the protection of the life and safety of employees in employments and places of employment may demand.

History: En. Sec. 8, Ch. 341, L. 1969; and. Sec. 4, Ch. 182, L. 1975.

Amendments

The 1975 amendment substituted "division" for "board" at the beginning of the section.

DECISIONS UNDER FORMER LAW

Employee of Independent Contractor

Neither city nor its supervising engineer had duty running to employee of independent contractor doing work for city to see that contractor complied with

minimum safety standards as it had specifically agreed to do. *Wells v. Stanley J. Thill & Associates, Inc.*, 153 M 28, 452 P 2d 1015.

41-1716. Notice of hearing on rules and codes. Upon the fixing of a time and place for the holding of a public hearing for the purpose of considering and issuing rules and codes, as authorized in this act, the division shall cause a notice of the hearing to be published in one or more daily newspapers of general circulation published in this state and in such other papers of general circulation in this state as the division may deem expedient. The notice shall contain a brief statement of the time, place and purpose of the hearing. No defect or inaccuracy in the notice or in the publication thereof shall invalidate any rule or code issued or adopted by the division after the hearing.

History: En. Sec. 9, Ch. 341, L. 1969; amd. Sec. 5, Ch. 182, L. 1975.

Amendments

The 1975 amendment substituted "division" for "board" throughout the section.

41-1717. Order directing additions, repairs, and improvements. Whenever the division, after a hearing had upon its own motion or upon complaint, finds that an employment or place of employment is not safe, or that the practices or methods or operations or processes employed or used in connection therewith are unsafe, or do not afford adequate protection to the life and safety of the employees in such employments and place of employment, the division shall make and enter and serve such order relative thereto as may be necessary to render such employment or place of employment safe and protect the life and safety of employees in such employment and places of employment. The division may in the order direct that such additions, repairs, improvements or changes be made and such safety devices and safeguards be furnished, provided and used, as are reasonably required to render such employment or places of employment safe, in the manner and within the time specified in the order.

History: En. Sec. 10, Ch. 341, L. 1969; amd. Sec. 6, Ch. 182, L. 1975.

Amendments

The 1975 amendment substituted "division" for "board" throughout the section.

41-1718. Notice of violation of safety code, order or rule—penalties for violations—hearings—injunction authorized. (1) The division upon finding any violation of any duly adopted safety code, order or rule involving failure to install or maintain any safety appliance, device or safeguard required by such safety order, code or rule, may prohibit the further use of the machine, equipment, or apparatus constituting such violation, and when such use is prohibited shall post notice in an appropriate place in plain view of any person likely to use the same calling attention to the unsafe condition, defect, or lack of safeguard and the fact that the further use thereof is prohibited.

(2) The notice required by subsection (1) of this section shall not be

removed until the required safety appliance, device or safeguard complies with the requirement of the safety order or safety code.

(3) Every person who, after the notice required by subsection (1) of this section is posted as provided in that subsection, uses or operates any place of employment, machine, device, apparatus or equipment referred to in subsection (1) of this section before it is made safe and the required safeguards or safety appliances or devices are provided, or who defaces or destroys or removes any notice required by subsection (1) of this section without the authority of the division, or who fails or refuses to file a report of accident as required by section 92-808, R. C. M. 1947, is guilty of a misdemeanor and, in addition to the punishment provided for misdemeanors, is subject to a civil penalty in an amount of not more than one thousand dollars (\$1,000). This civil penalty may be imposed and collected by the division in an action brought in the name of the state of Montana in the county in which the employer resides or in which he employs workers. Any penalty collected under this subsection shall be paid into the industrial accident administrative earmarked revenue account.

(4) Any person aggrieved by an order prohibiting the use of the machine, equipment, apparatus or place of employment as provided for in this section may request a hearing before the division within twenty (20) days after entry of such order. The division shall then affirm, modify or revoke the order and all procedures of this act relative to entry of orders, rehearing and appeal shall apply.

(5) In addition to all other remedies provided in this act, the division may bring an action to enjoin any violation of any duly adopted safety order, code or rule.

History: En. Sec. 11, Ch. 341, L. 1969;
amd. Sec. 7, Ch. 182, L. 1975.

Amendments

The 1975 amendment substituted "division" at the beginning of subsection (1) for "board, or authorized representative thereof with the approval of the board, or the safety director"; substituted "divi-

sion" for "board" throughout the remainder of the section; substituted "duly adopted safety code" for "duly promulgated safety code" in subsection (1) and subsection (5); substituted "workers" for "workmen" near the end of subsection (3); and designated the last two paragraphs as subsections (4) and (5).

41-1719. Time allowed for compliance with order. The division shall grant such time as may be reasonably necessary for compliance with any order, and any person affected by the order may petition the division for an extension of time, which the division shall grant if it finds the extension of time necessary.

History: En. Sec. 12, Ch. 341, L. 1969;
amd. Sec. 8, Ch. 182, L. 1975.

Amendments

The 1975 amendment substituted "division" for "board" throughout the section.

41-1720. Order of closure or for cessation of work where place of employment an immediate menace to life or safety. The division may order any place of employment closed, or the work therein to cease if it is found that the place of employment is in such an unsafe condition as to constitute an immediate menace to the life or safety of the workers employed therein. Any such order of closure or for cessation of work shall be ex-

pressly limited to only that portion of the plant, installation or facility as is directly and immediately affected by the unsafe condition constituting an immediate menace to the life and safety of the workers employed therein. Upon issuance of any such order, the division shall fix a place and time, not later than twenty-four (24) hours thereafter, for a hearing to be held before the division. Not more than twenty-four (24) hours after the commencement of the hearing, and without adjournment thereof, the division shall affirm, modify, or set aside the order. Nothing in this section shall empower the division to determine that any employment or place of employment is in an unsafe condition on the basis of the number or qualifications of employees operating such employment or place of employment unless a specific rule adopted after public hearing is violated. Provided that for those employments or places of employment for which no code has been adopted and where it is found by the division that such place of employment is in such an unsafe condition as to constitute an immediate menace to the life or safety of the workers there employed, the division may order that portion of the plant, installation or facility as is directly and immediately affected by such unsafe condition closed for a period not to exceed four (4) hours unless such period be extended by order of the division.

History: En. Sec. 13, Ch. 341, L. 1969; amd. Sec. 9, Ch. 182, L. 1975.

Amendments

The 1975 amendment substituted "divi-

sion" for references to the board or the safety director throughout the section; substituted "workers" for "workmen" throughout the section; and made minor changes in phraseology.

41-1721. Judicial review of division's orders, rules or decisions. (1) The orders of the division, its rules, findings and decisions, made and entered under the provisions of this act, may be reviewed by the courts within the time and in the manner specified in this section and not otherwise.

(2) Within thirty (30) days after an application for rehearing is denied, or, if the application is granted, within thirty (30) days after rendition of the decision on the rehearing, any party affected thereby may appeal to the district court for the county in which is situated the place of employment complained of for the purpose of having the lawfulness of the original order, or decision, or the order or decision on rehearing inquired into and determined.

(3) To give the district court jurisdiction it is sufficient that a notice be filed with the clerk of the court to the effect that an appeal is taken to the district court from the order or decision of the division and describing the order or decision sufficiently for purposes of identification. The notice shall be signed by the party appealing or his attorney and a copy thereof shall be served by certified mail upon the division. Within ten (10) days after the receipt of the notice, the division shall file with the clerk of court the record of proceedings before the division, including a transcript of all the evidence adduced upon the hearing and any rehearing before the division. The district court, on application for good cause shown, may extend the time within which the division shall file the record, transcript and evi-

dence. The cause shall be tried in the same manner as a civil action, provided that no new or additional evidence may be introduced in the court, but the cause shall be heard on the record to the court as certified to it by the division.

(4) The appeal shall not be extended further than to determine whether or not:

(a) The division acted without or in excess of its powers, or in violation of the law;

(b) The order or decision was procured by fraud;

(c) The order, decision or rule is unreasonable;

(d) If findings of fact are made, the finding of fact supports the order or decision under review.

(5) An appeal may be taken from the decree of the district court to the supreme court as in all other civil cases.

History: En. Sec. 14, Ch. 341, L. 1969; **Amendments**
amd. Sec. 10, Ch. 182, L. 1975.

The 1975 amendment substituted "division" for "board" throughout the section.

41-1722. Application for rehearing of order, decision, or rule of division. Any party aggrieved directly or indirectly by any final order, decision or rule of the division made or entered pursuant to this act may apply to the division within twenty (20) days after the order of the division for rehearing in respect to any matters determined or covered by such final order, decision or rule, and specified in the application, for hearing within the time and in the manner prescribed in this act.

History: En. Sec. 15, Ch. 341, L. 1969; **Amendments**
amd. Sec. 11, Ch. 182, L. 1975.

The 1975 amendment substituted "division" for "board" throughout the section.

41-1723. Application for rehearing—contents—waiver—copies to adverse parties—procedure where no adverse parties. (1) The application for rehearing shall set forth specifically and in full detail the grounds upon which the applicant considers the final order, decision or rule is unjust or unlawful, and every issue to be considered by the division.

(2) The applicant for rehearing shall be deemed to have finally waived all objections, irregularities and illegalities concerning the matters upon which rehearing is sought other than those set forth in the application.

(3) A copy of the application for rehearing shall be served immediately on all adverse parties, who may file an answer thereto within ten (10) days after being served.

(4) If there are no adverse parties, the application may be heard ex parte, or the division may require the application for rehearing to be served on such parties as may be designated by the division.

History: En. Sec. 16, Ch. 341, L. 1969; **Amendments**
amd. Sec. 12, Ch. 182, L. 1975.

The 1975 amendment substituted "division" for "board" throughout the section.

41-1724. Resolution of issues on rehearing—notice—disposition. (1) Upon the filing of the application for rehearing, if the issues raised thereby

have theretofore been adequately considered by the division, it may determine the same by confirming, without hearing, its previous determination, or if a rehearing is necessary to determine one or more of the issues raised, the division shall order a rehearing thereon and consider and determine the matters raised by such application.

(2) Notice of the time and place of the rehearing shall be given to the applicant, the adverse parties and such other persons as the division may order.

(3) If after the rehearing and the consideration of all the facts, including those arising since the making of the order or decision involved, the division shall be of the opinion that all or any part of the original order or decision is in any respect unjust or unwarranted, or should be changed, the division shall abrogate, change or modify the same.

(4) An order or decision made after the rehearing, abrogating, changing or modifying the original order or decision shall have the same force and effect as an original order or decision but shall not affect any right or the enforcement of any right arising from or by virtue of the original order or decision unless so ordered by the division.

(5) An application for rehearing is considered denied by the division unless it has been acted upon within thirty (30) days from the date of filing; provided that the division may, upon good cause being shown therefor, extend the time within which it may act upon an application for rehearing for not exceeding an additional thirty (30) days.

History: En. Sec. 17, Ch. 341, L. 1969; Amendments
amd. Sec. 13, Ch. 182, L. 1975.

The 1975 amendment substituted "division" for "board" throughout the section.

41-1725. Periodic inspections of hazardous places of employment—report. (1) The division shall inspect from time to time all the places of employment defined in the Montana Workers' Compensation Act as being hazardous and the machinery and appliances therein contained for the purpose of determining whether they conform to law.

(2) A report of such periodic inspection shall be filed in the office of the division and a copy thereof given the employer. Such report shall not be open to public inspection, or made public except on order of the division, or by the division in the course of a hearing or in the course of a hearing or proceeding.

History: En. Sec. 17, Ch. 341, L. 1969;
amd. Sec. 14, Ch. 182, L. 1975.

Amendments

The 1975 amendment substituted "divi-

sion" for "board" throughout the section; substituted "Workers' Compensation Act" for "Workmen's Compensation Act"; and made minor changes in phraseology.

41-1726. Workers to notify employers of safety violations—complaint to division—investigation. (1) A worker shall notify the worker's employer of any violation of law or regulation pertaining to safety of places of employment when the violation comes to the knowledge of the worker.

(2) If the employer fails to remedy the violation, the worker may complain in writing to the division of the violation.

(3) Upon receiving the complaint the division shall forthwith inquire or make an inspection as to the safety of the place of employment. A copy of the report of inspection shall be given to the complainant.

History: En. Sec. 19, Ch. 341, L. 1969; amd. Sec. 15, Ch. 182, L. 1975. ences to workers for references to workmen; and substituted "division" for "board."

Amendments

The 1975 amendment substituted refer-

41-1727. Code-making power. (1) The division may adopt, amend, repeal and enforce rules for the prevention of accidents to be known as "safety codes" in every employment and place of employment, including the repair and maintenance of such places of employment, to render them safe. In the performance of its duties the division may appoint advisory committees to deal with specified industries composed of equal numbers of employers and employees; and others to suggest safety codes or amendments thereto. All such safety codes and rules shall, when adopted, be not inconsistent with the then existing widely accepted codes of such engineering bodies as the American Society of Mechanical Engineers, the American Standards Association, the American Society of Safety Engineers, the United States of America Standards Institute, the National Fire Protection Association, and, in addition, agencies of the federal government with responsibilities for administering worker safety programs, and other accepted codes. Any amendments made to such codes by the division shall be such that when amended such code shall be consistent with the widely accepted safety codes as then existing. All codes and all amendments thereto and repeals thereof shall take effect thirty (30) days after certified copies thereof shall be filed in the office of the secretary of state.

(2) Every code adopted and every amendment or repeal thereof shall be published in such manner as the division may determine. A printed list of all titles of all codes including amendments thereof issued and adopted by the division under the provisions of this act, together with the dates of adoption thereof, shall be published from time to time.

History: En. Sec. 20, Ch. 341, L. 1969; amd. Sec. 16, Ch. 182, L. 1975. "In addition to such other powers and duties as may be conferred upon it by law, the board shall have the power to promulgate"; and substituted "division" for "board" throughout the section.

Amendments

The 1975 amendment substituted "The division may adopt" in subsection (1) for

41-1728. Variations. Any employer may consult with the division for advice and assistance in complying with the provisions of this act or any codes adopted hereunder. In case of practical difficulties, the division may grant variations from particular provisions of the code and permit the use of other or different devices or methods. However, such variations shall be granted only when it is clear that the reasonable safety of the workers in the plant or place of employment is not thereby endangered. In any case where the division shall decline or refuse to grant any request for variations on the ground that the safety of the workers involved would be endangered, the employer may request a rehearing as specified

in this act. A properly indexed record of all variations made shall be kept in the office of the division and be open to public inspection.

History: En. Sec. 21, Ch. 341, L. 1969;
amd. Sec. 17, Ch. 182, L. 1975.

Amendments

The 1975 amendment substituted "division" for "board" throughout the section; and made minor changes in phraseology.

41-1729. General research and review powers of division—power to appoint advisers. The division may: (1) Develop greater knowledge and interest in the causes and prevention of industrial accidents, occupational diseases and related subjects through:

(a) Research, conferences, lectures and uses of public communications media;

(b) Collection and dissemination of accident statistics, and

(c) Development of staff competent in the review of safety codes.

(2) Appoint advisers who shall be compensated by the division if necessary, and who shall assist the division in establishing standards of safety. The division may adopt and incorporate in its orders such safety recommendations as it may receive from such advisers.

History: En. Sec. 22, Ch. 341, L. 1969;
amd. Sec. 18, Ch. 182, L. 1975.

Amendments

The 1975 amendment substituted "division" for "board" throughout the section.

41-1730. Violation of safety provision—misdemeanor. In addition to all other penalties herein provided: Every employer, workman or other person, who, either individually or acting as an officer, agent, or employee of a corporation or other person, violates any safety provision of this act, or who, directly or indirectly, knowingly induces another to do so is guilty of a misdemeanor.

History: En. Sec. 23, Ch. 341, L. 1969.

41-1731. Public contractors subject to act. Every contractor performing services for the state of Montana or any political subdivision thereof, shall be required to comply with the safety rules, codes and provisions of this act, as a part of his contract.

History: En. Sec. 24, Ch. 341, L. 1969.

41-1732. Effect on existing structures and equipment. Nothing contained in this act shall prevent the use of existing buildings, structures, and equipment during their lifetime when they are maintained in good condition, are properly safeguarded, and conform to the applicable safety standards required by Montana safety codes effective prior to the effective date of this act, and provided that replacements and alterations shall conform to all provisions of this act.

History: En. Sec. 25, Ch. 341, L. 1969.

Compiler's Notes

Chapter 341, Laws 1969 took effect July 1, 1969.

41-1733. Occupational health hazards. The division shall report occupational health hazards discovered in its investigations and inspection

of places of employment to the department of health and environmental sciences and shall co-operate with the department of health and environmental sciences in carrying out its duties as specified in Title 69, chapter 42, R. C. M. 1947.

History: En. Sec. 26, Ch. 341, L. 1969;
amd. Sec. 19, Ch. 182, L. 1975.

Amendments

The 1975 amendment substituted "division" for "board"; and substituted "department of health and environmental sciences" in two places for "state board of health."

Separability Clause

Section 27 of Ch. 341, Laws 1969 read "If any of the provisions of this act are declared or held to be invalid or unconstitutional, such holding shall not affect the validity of the act as a whole, or any part thereof which can be given effect without the part so held to be unconstitutional or invalid."

CHAPTER 19—WINTER WORK PROGRAMS

- Section 41-1901. Definition of terms.
41-1902. Municipal winter work committees authorized—composition and appointment of members.
41-1903. Terms of work committee members—no compensation.
41-1904. Meetings and officers of work committee.
41-1905. Promotion of winter work program.
41-1906. State employment service to co-operate.
41-1907. Minutes of work committee filed—availability to legislators.

41-1901. Definition of terms. As used in this act (1) "Winter work program" means a program to promote and encourage the accomplishment of work that would alleviate the rolls of the unemployed during the winter months.

(2) "Winter work committee" is a local committee appointed to effect the program.

History: En. Sec. 1, Ch. 68, L. 1965.

Title of Act

An act concerning a winter work program.

41-1902. Municipal winter work committees authorized—composition and appointment of members. The mayor of any municipality may appoint a winter work committee composed of at least five (5) members. The members shall be from various economic groups including labor, industry, business, welfare and news media. In municipalities where the economic groups are represented by organizations, the mayor shall give notice to each organization that he is going to make the appointments and shall set a date by which names must be submitted. On the date set for submittal, he shall select one member from each of the economic groups.

History: En. Sec. 2, Ch. 68, L. 1965.

41-1903. Terms of work committee members—no compensation. Original appointments shall be for five (5), four (4), three (3), two (2) and one (1) years. The original terms shall be determined by lot. After the original appointments have expired, terms shall be for five (5) years. There shall be no compensation for service on this committee.

History: En. Sec. 3, Ch. 68, L. 1965.

41-1904. Meetings and officers of work committee. The committee shall meet within ten (10) days of appointment by the mayor. They shall select a chairman and a secretary and other necessary officers. Thereafter, the committee shall meet at least quarterly and at such other times as may be necessary, convenient or desired.

History: En. Sec. 4, Ch. 68, L. 1965.

41-1905. Promotion of winter work program. The committee shall work through public service advertising and through public relations to promote the winter work program.

History: En. Sec. 5, Ch. 68, L. 1965.

41-1906. State employment service to co-operate. The employees of free public employment offices of the Montana state employment service shall co-operate with the committee.

History: En. Sec. 6, Ch. 68, L. 1965.

41-1907. Minutes of work committee filed—availability to legislators. Minutes of the meetings of the committee shall be filed by the secretary of the committee with the mayor of the municipality who shall keep them as other public records. Members of the legislative assembly may use these minutes to determine the employment problems of the municipalities involved.

History: En. Sec. 7, Ch. 68, L. 1965.

CHAPTER 20—RESTAURANT, BAR AND TAVERN WAGE PROTECTION ACT

- Section 41-2001.** Short title.
41-2002. Bond required of lessee.
41-2003. Purpose of act.
41-2004. Definition of terms.
41-2005. Bond to be filed by lessee—amount—ownership affidavit.
41-2006. Time of filing of bond—terms of bond—maintenance of bond required.
41-2008. Lessee's business enjoined until bond filed.
41-2010. New or additional bond—sureties.

41-2001. Short title. This act shall be known as the Restaurant, Bar and Tavern Wage Protection Act.

History: En. Sec. 1, Ch. 155, L. 1965.

Title of Act

An act requiring the lessee of restaurants, bars or taverns to file payroll

bonds for the protection of employees of lessees where the equipment, appliances, and other accessories necessary for the conduct of business therein at the place of business are owned by the lessor.

41-2002. Bond required of lessee. From and after the effective date of this act, it shall be unlawful for any person to lease a premise to be used as the place for conducting a restaurant, bar or tavern business, without first having filed with the commissioner of labor and industry a bond in accordance with the requirements of section 41-2005.

History: En. Sec. 1, Ch. 155, L. 1965; amd. Sec. 1, Ch. 198, L. 1974.

Amendments

The 1974 amendment deleted "where

the equipment, appliances and other accessories necessary for the conduct of business therein are owned by the lessor" after "tavern business"; and made a minor change in style.

41-2003. Purpose of act. The purpose of this act is to protect the state of Montana and employees of lessees conducting business as restaurants, bars and taverns and to assure the payment of wages to such employees in the event the lessee ceases operation of his business and is unable to pay the wages due and owing to his employees; and to assure the payment of payroll taxes to the employment security division of the department of labor and industry.

History: En. Sec. 3, Ch. 155, L. 1965; amd. Sec. 2, Ch. 198, L. 1974; amd. Sec. 1, Ch. 238, L. 1975.

Amendments

The 1974 amendment deleted "employed under the circumstances of ownership of the equipment, appliances and other acces-

sories as outlined in section 2 [41-2002] of this act" after "bars and taverns."

The 1975 amendment inserted "the state of Montana and" near the beginning of the section; and added "and to assure the payment of payroll taxes to the employment security division of the department of labor and industry" to the end of the section.

41-2004. Definition of terms. For the purposes of this act the words and phrases used herein have the following meaning:

(1) "Person" includes any establishment, firm, partnership, corporation, person or association of persons.

(2) "Restaurant" means a public eating house where food is prepared and served for human consumption on the premises.

(3) "Lessee" means one to whom a lease is made.

(4) "Bar" or "tavern" means a house where liquor or beer are sold to be drunk on the premises.

(5) "Liquor" means any beverage so defined in the Alcoholic Beverages Code.

(6) "Beer" means any beverage so defined in the Alcoholic Beverages Code.

(7) "Employee" means a person who works for wages or salary in the service of an employer.

(8) "Business" means a commercial enterprise of any kind involving the buying and selling of goods.

History: En. Sec. 4, Ch. 155, L. 1965; amd. Sec. 3, Ch. 198, L. 1974; amd. Sec. 118, Ch. 387, L. 1975.

Amendments

The 1974 amendment deleted former subdivision (3) reading "'Lessor' means one who has leased premises, equipment, appliances or accessories for a definite or indefinite period, by a written or parol lease"; deleted former subdivision (10) reading "'Equipment' means the articles, furnishings, supplies and apparatus used in a business"; deleted former subdivision (11) reading "'Appliances' means all de-

vices and apparatus used in the conduct of business"; deleted former subdivision (12) reading "'Accessories' means those articles, furnishings, supplies, devices and other apparatus which are used in and contribute in a secondary way, along with the appliances and equipment, to the conduct of a business"; and redesignated the remaining subdivisions.

The 1975 amendment substituted the definitions for liquor and beer in subdivisions (5) and (6) for "'Liquor' means and includes any alcoholic, spirituous, vinous, fermented, malt or other liquor which contains more than one per centum

(1%) of alcohol by weight, but shall not mean or include beer as that term is defined in the Montana Beer Act by subsection (b) of section 4-302, Revised Codes of Montana, 1947," and "Beer" means any beverage obtained by alcoholic

fermentation of an infusion or decoction of barley, malt and hops, or of any similar products, in drinkable water, containing not more than four per centum (4%) alcohol by weight."

41-2005. Bond to be filed by lessee — amount — ownership affidavit. Every person who leases from another person premises for the purpose of conducting therein a business as a restaurant, bar or tavern is hereby required to file a bond equal to at least double the amount of the projected semimonthly payroll with the commissioner of labor and industry.

History: En. Sec. 5, Ch. 155, L. 1965; amd. Sec. 4, Ch. 198, L. 1974.

inserted "projected" before "semimonthly"; and deleted "and an affidavit showing the name of the owner of the equipment, appliances and other accessories necessary for the conduct of business therein" from the end of the section.

Amendments

The 1974 amendment deleted "or who leases equipment, appliances or accessories for such purpose" after "bar or tavern";

41-2006. Time of filing of bond—terms of bond—maintenance of bond required. The bond and affidavit required by section 41-2005 shall be filed with the commissioner of labor and industry. The state of Montana shall be named as the obligee therein with good and sufficient sureties to be approved by the attorney general of the state of Montana. Said bond shall at all times be kept in full force and effect and any cancellation or revocation thereof or withdrawal of the sureties therefrom shall automatically revoke and suspend the certificate issued to the lessee of this act until such time as a new bond of like tenure and effect shall have been filed and approved as herein provided. Such bond shall be conditioned to assure that in any lease transaction of the type referred to in section 41-2002 the persons who perform labor or other personal services for the lessee are guaranteed their wages in the event the lessee ceases operation of the business, for any reason, and is unable to pay the wages due and owing the employees; and to assure payment due the employment security division as a result of payroll taxes.

History: En. Sec. 6, Ch. 155, L. 1965; amd. Sec. 5, Ch. 198, L. 1974; amd. Sec. 2, Ch. 238, L. 1975.

The 1975 amendment added "and to assure payment due the employment security division as a result of payroll taxes" to the end of the section; and made a minor change in style.

Amendments

The 1974 amendment deleted "by July 1 and February 1 of each year" at the end of the first sentence; deleted "therein as provided in section 9 [41-2009]" in the third sentence after "to the lessee"; and made minor changes in style and phraseology.

Repealing Clause

Section 6 of Ch. 198, Laws 1974 read "Sections 41-2007, 41-2009, and 41-2011, R. C. M. 1947, are repealed."

41-2007. Repealed.

Repeal

Section 41-2007 (Sec. 7, Ch. 155, L. 1965), relating to liability of lessor and

lessee for unpaid wages, was repealed by Sec. 6, Ch. 198, Laws of 1974.

41-2008. Lessee's business enjoined until bond filed. If any person engages in the restaurant, bar or tavern business, as lessee, without having

first filed a bond as required by section 5 [41-2005] of this act, the attorney general of the state of Montana, the commissioner of labor and industry of the state of Montana, or any citizen, group of citizens or any association in the county where the violator conducts his business may institute an action to enjoin such person from engaging in the business until compliance with this act has been met.

History: En. Sec. 8, Ch. 155, L. 1965.

Who May Bring Action

The administrator of the labor standards division of the department of labor and industry, not being named as a per-

son entitled to file suit under this section, was not a proper party plaintiff, and an action brought by him was properly dismissed. *Softich v. Baker*, — M —, 556 P 2d 902.

41-2009. Repealed.

Repeal

Section 40-2009 (Sec. 9, Ch. 155, L. 1965), relating to certificates for lessees

who file bonds, was repealed by Sec. 6, Ch. 198, Laws of 1974.

41-2010. New or additional bond—sureties. The commissioner of labor and industry may require a new bond or a bond of a greater amount than double the semimonthly payroll whenever the commissioner deems it necessary for the protection of the state of Montana or the employees of a lessee. The commissioner may, after due notice given, discharge the existing sureties from further liability and require that other sureties be provided.

History: En. Sec. 10, Ch. 155, L. 1965; amd. Sec. 3, Ch. 238, L. 1975.

Amendments

The 1975 amendment inserted "the state of Montana or" near the end of the first sentence.

Separability Clause

Section 12 of Ch. 155, Laws 1965 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

41-2011. Repealed.

Repeal

Section 41-2011 (Sec. 11, Ch. 155, L. 1965), relating to the disposition of appli-

cation fees, was repealed by Sec. 6, Ch. 198, Laws of 1974.

CHAPTER 21—LABOR SAFETY STUDY COMMISSION

(Repealed—Section 39, Chapter 187, Laws of 1977)

41-2101 to 41-2108. Repealed.

Repeal

Sections 41-2101 to 41-2108 (Secs. 1 to 8, Ch. 323, L. 1967; Sec. 17, Ch. 439,

L. 1975), relating to the labor safety study commission, were repealed by Sec. 39, Ch. 187, Laws 1977.

CHAPTER 22—NURSES—EMPLOYMENT PRACTICES

- Section 41-2201. Purpose of act.
 41-2202. Definitions.
 41-2203. Improper employment practices.
 41-2204. Bargaining units—determination by mutual consent or application to board.
 41-2205. Proof of status as bargaining unit.
 41-2206. Determination of question on status of bargaining unit—petition—election—redetermination.
 41-2207. Duties of board relating to bargaining unit determinations.
 41-2208. Proceedings to restrain improper employment practices—other relief—appeal.
 41-2209. Unlawful strikes.

41-2201. Purpose of act. The purpose of this act is to encourage effective measures to assure uninterrupted continuation of sufficient competent nursing care of the ill and infirm in the state of Montana, and further to encourage the practice of mutually and peacefully agreeing upon the establishment and maintenance of desirable employment practices between nurse employees, professional and practical, and their health care facility employers, either public or private.

History: En. Sec. 1, Ch. 320, L. 1969.

Title of Act

An act providing for the adoption of orderly procedures for establishing desirable employment practices for registered

professional and licensed practical nurses employed in health care facilities; establishing procedures for developing employment standards; providing rule-making authority to the state board of health.

41-2202. Definitions. As used in this act, unless the context clearly requires otherwise:

(1) "Appropriate unit" means a homogenous group of employees (as herein defined) of a health care facility having similar duties and qualifications, determined pursuant to section 4 [41-2204] of this act.

(2) "Employee" means a registered professional or licensed practical nurse performing services for compensation for a health care facility, but does not include a member of a religious order assigned to a health care facility by the order as a part of her obligation to the order.

(3) "Health care facility" means a hospital or nursing home, or other agency or establishment, employing employees as defined in this act, whether operated publicly or privately, having as one of its principal purposes the preservation of health or the care of sick or infirm individuals or both.

(4) "Board" or "board of health" means the state board of health.

(5) "Strike" shall mean any work stoppage caused by the employees of a health care facility as defined in section 2 [subdivision (3) of this section] of this act, that interferes with the operation of the health care facility or affects the care of patients in the health care facility.

History: En. Sec. 2, Ch. 320, L. 1969.

41-2203. Improper employment practices. It is an improper employment practice for a health care facility to do one or more of the following:

(1) Interfere with or restrain or coerce employees in any manner in the exercise of their right of self-organization;

(2) Initiate, create, dominate, contribute to or interfere with the formation or administration of any employee organization that has collective bargaining as one of its principal functions;

(3) Discriminate in regard to hire terms or conditions of employment when a purpose of such is to discourage membership in an employee organization that has collective bargaining as one of its principal functions;

(4) Refuse to meet and bargain in good faith with the duly designated representatives of an appropriate bargaining unit of its employees. For the purpose of this subsection, it is a requirement of bargaining in good faith that the parties be willing to reduce in writing, and have their representative sign, any agreement arrived at through negotiations and discussion;

(5) Unilaterally exclude from work or prevent from working, or discharge any one or more employees, when the purpose of such action is in whole or in part, to interfere with or coerce or intimidate an employee in the exercise of rights assured in this law.

History: En. Sec. 3, Ch. 320, L. 1969.

41-2204. Bargaining units—determination by mutual consent or application to board. (1) The composition of an appropriate unit in a health care facility, for purposes of this law, may be determined by mutual consent between such facility and the employees thereof.

(2) In the event no such mutual consent is available, then either the facility, or representatives of employees may apply to the state board of health and said board, through a duly designated agent, shall make a determination of the composition of such an appropriate unit.

(3) In determining such appropriate unit professional employees may not be included in the same unit with nonprofessional employees unless a majority of professional employees in a proposed unit desire such inclusion. Weight shall be accorded similarity of duties, licensure, and conditions of employment, among other relevant factors, in determining an appropriate unit.

History: En. Sec. 4, Ch. 320, L. 1969.

41-2205. Proof of status as bargaining unit. An employee organization is considered to be the duly designated representative of all the employees in an appropriate unit for the purpose of section 3 [41-2203] of this act if it can show evidence that bargaining rights have been assigned to it by a majority of the employees in that unit.

History: En. Sec. 5, Ch. 320, L. 1969.

Assignment of Bargaining Rights

Where nine of seventeen nurses had assigned their bargaining rights to new nurses' association prior to "cutoff date," assignments were effective; board's request that assignments of bargaining

rights be executed anew after employer asked for a redetermination was unnecessary and fact that employee reaffirmed assignment of her bargaining rights after the cutoff date and also after termination of her employment had no effect on validity of assignment where she had previously assigned her bargaining rights

to new association, such assignment had not been revoked and she was an employee on the cutoff date. St. John's

Lutheran Hospital, Inc. v. State Board of Health, — M —, 506 P 2d 1378.

41-2206. Determination of question on status of bargaining unit—petition—election—redetermination. (1) If the right of an employee organization to represent the employees in an appropriate unit is questioned by the authority in charge of the facility employing the employees, the employee organization may petition the board of health for a determination. The board of health, or his representative, shall investigate and determine the composition of an appropriate unit, if such determination has not previously been made under section 4 [41-2204] of this act, and shall determine the representative, if any, designated to represent the employees in the appropriate unit.

(2) An employee organization found by the state board of health to be authorized by at least thirty per cent (30%) of the employees in an appropriate unit may apply for an election by secret ballot to determine its right to represent the employees in that unit. If more than one employee organization claims to represent employees in that unit, the state board of health may conduct an election by secret ballot to determine which is authorized to represent the unit. If any employee organization receives a majority of the valid votes cast at the election, it is considered to be authorized to represent all the employees in that unit for the purpose of section 3 [41-2203] of this act.

(3) A determination under this section remains in effect for at least one (1) year and until either the health care facility or an employee organization shall apply for a redetermination.

History: En. Sec. 6, Ch. 320, L. 1969.

41-2207. Duties of board relating to bargaining unit determinations. The board of health may: (1) Set the time and place for hearings for determination of the composition of appropriate units when requested to make such determination under subsection 2, section 4 [41-2204], or subsection 1, section 6 [41-2206] of this act.

(2) Determine, on its own motion, by holding hearings or conducting such investigations as it thinks necessary, general classifications for health care facilities and appropriate units. When such determination has been made hereunder and when an application has been made by a health care facility or an employee organization for a specific determination as to it, the board may make such determination on the basis of such general classification. The health care facility or employee organization may, within thirty (30) days after notice to it of such determination, file a request for a hearing upon written petition which shall set forth the facts which it believes remove it from such general classification and hearing shall be held on such petition.

(3) Adopt and promulgate rules and regulations as to times and places for hearing and notice thereof so as to provide adequate notice

and opportunity to be heard to all interested parties; as to elections; and so as to carry into effect the provisions of this act.

History: En. Sec. 7, Ch. 320, L. 1969.

Cross-References

Board functions transferred to department of labor and industry, sec. 82A-1003 (1).

41-2208. Proceedings to restrain improper employment practices—other relief—appeal. The board of health, a health care facility or an employee organization qualified to apply for an election under section 6 [41-2206] of this act may, in the name of its members, or in its name, institute proceedings to restrain the commission of any improper practice listed in section 3 [41-2203] of this act or appeal from any determination by the board. The proceeding may be instituted in the district court for any county in which the health care facility does business. The court in such an action may grant mandatory or prohibitory relief, or, on appeal, adjudicate whether the board has acted in abuse of discretion or upon arbitrary or discriminatory rules or regulations, in which event the court may reverse or modify such determination.

History: En. Sec. 8, Ch. 320, L. 1969.

41-2209. Unlawful strikes. It shall be unlawful for any employee of a health care facility as defined in section 2 [41-2202] of this act to participate in a strike if there is another strike in effect at another health care facility within a radius of 150 miles. Employees of a health care facility as defined in section 2 [41-2202] of this act or their duly elected representative must give the health care facility thirty (30) days written notice of any strike by them and must specify in the notice the day the strike is to begin.

History: En. Sec. 9, Ch. 320, L. 1969.

Separability Clause

Section 10 of Ch. 320, Laws 1969 read
"This act shall be severable, and should

any part or provision hereof be held to be unconstitutional such declaration will not invalidate the remaining provisions hereof."

CHAPTER 23—MINIMUM WAGES AND HOURS

Section 41-2301. Declaration of policy.

41-2302. Definitions.

41-2303. Compensation.

41-2303.1. Minimum wages of firefighters in cities of first and second class.

41-2303.2. Exceptions.

41-2304. Exclusions.

41-2305. Regulations.

41-2306. Enforcement.

41-2307. Provisions cumulative.

41-2301. Declaration of policy. It is declared to be the policy of this act (1) to establish minimum wage and overtime compensation standards for workers at levels consistent with their health, efficiency, and general well-being; (2) to safeguard existing minimum wage and overtime compensation standards which are adequate to maintain the health, efficiency, and general well-being of workers against the unfair

competition of wage and hour standards which do not provide such adequate standards of living; and (3) to sustain purchasing power and increase employment opportunities.

History: En. Sec. 1, Ch. 417, L. 1971.

Title of Act

An act to establish minimum wages and hours for employees in the state of Montana; delegating to the commissioner of labor the duty of administering the act; and providing enforcement.

Constitutionality

This act does not violate the due process clause because of vagueness, does not constitute an unlawful delegation of legislative or judicial power, and meets the constitutional requirement that the subject of an act be clearly expressed in its title. *City of Billings v. Smith*, 158 M 197, 490 P 2d 221.

41-2302. Definitions. (a) As used in this act, "commissioner" means the commissioner of labor and industry.

(b) "Wage" means compensation due to an employee by reason of his employment, payable in legal tender of the United States or check on banks convertible into cash on demand at full face value, subject to such allowance as may be permitted by regulations of the commissioner under section 5 [41-2305] of this act. The term "wage" includes the reasonable cost to the employer of furnishing such employee with board, lodging, or other facilities, if such board, lodging, or other facilities are customarily furnished by such employer to his employees; provided however, that in no case shall such inclusion exceed an amount equal to forty per cent (40%) of the total wage paid by such employer to such employee.

(c) "Employ" means to suffer or permit to work.

(d) "Employee" includes any individual employed by an employer.

(e) "Occupation" means any occupation, service, trade, business, industry or branch or group of industries or employment or class of employment in which employees are gainfully employed.

(f) "Farm worker" means any person employed to do any service performed on a farm or ranch.

(g) "Farm or ranch" shall mean any endeavor primarily engaged in cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, and poultry and fur-bearing animals and wildlife.

History: En. Sec. 2, Ch. 417, L. 1971.

41-2303. Compensation. (a) Except as may otherwise be provided pursuant to this act, every employer shall pay to each of his employees wages at a rate not less than provided in subsections (1) and (2) save and except for farm workers as herein defined:

(1) One dollar eighty cents (\$1.80) an hour for the first year from the effective date of this act;

(2) Two dollars (\$2.00) an hour for the second year from the effective date of this act and thereafter.

(b) No employer shall employ any of his employees for a work week longer than forty (40) hours, unless such employee receives

compensation for his employment in excess of forty (40) hours in a work week at a rate of not less than one and one-half ($1\frac{1}{2}$) times the hourly wage rate at which he is employed. No overtime provision shall apply for farm workers. Employers of students at an amusement or recreational area that operates on a seasonal basis who furnish said students with board, lodging or other facilities shall not employ said students for a work week longer than forty-eight (48) hours, unless such students receive compensation for their employment in excess of forty-eight (48) hours in a work week at a rate of not less than one and one-half ($1\frac{1}{2}$) times the hourly wage rate at which they are employed.

(c) In the case of a farm worker employed for a part of a calendar year which includes periods requiring working hours in excess of eight hours per day and other seasonal periods requiring working hours substantially less than eight hours per day the employer may pay the worker at a fixed rate of compensation during the term of employment. The employer may elect to: (1) keep a record of the total number of hours worked by the worker during the part of the year during which the worker was employed by him. The total wages paid by such employer to such employee for that part of the year during which said employee was employed by him shall not be less than the applicable minimum wage rate multiplied by the total number of hours so worked, or (2) in lieu of the minimum wage set forth herein, pay the farm worker a wage as herein defined on a monthly basis. This monthly compensation shall constitute a minimum wage and shall not be less than the following rates:

(1) four hundred twenty dollars (\$420) a month for the first year from the effective date of this act;

(2) four hundred sixty dollars (\$460) a month for the second year from the effective date of this act and thereafter.

History: En. Sec. 3, Ch. 417, L. 1971; amd. Sec. 1, Ch. 363, L. 1973; amd. Sec. 1, Ch. 421, L. 1975.

Amendments

The 1973 amendment inserted "exclusive of gratuities" at the end of the preliminary paragraph of subsection (a).

The 1975 amendment substituted "not less than provided in subsections (1) and (2)" for "not less than \$1.60 an hour" in subsection (a); deleted from the end of subsection (a) "and students employed at an amusement or recreational establishment that operates on a seasonal basis, who shall be compensated at not less than the following rates, exclusive of gratuities"; increased the first year hourly minimum in subdivision (a)(1) from \$1.20 to \$1.80; increased the second year hourly minimum in subdivision (a)(2) from \$1.40 to \$2.00 and made it apply "thereafter"; deleted subdivision (a)(3) which read "one dollar sixty cents (\$1.60) an hour for the third year from the effective date

of this act and thereafter"; redesignated subdivisions (c)(a) and (b) as (c)(1) and (2); increased the first year minimum monthly wage in subdivision (c)(1) from \$280 to \$420; increased the second year monthly minimum wage in subdivision (c)(2) from \$325 to \$460 and made it apply "thereafter"; deleted a last subdivision which read "three hundred seventy-five dollars (\$375) a month for the third year from the effective date of this act"; and made minor changes in punctuation.

Public Officers and Employees

Provisions of this act and the provision dictating that county commissioners fix the salaries of deputies (25-604) are in conflict and the special act prevails over the general provisions of this act. Because a maximum is provided by section 25-604, the time-and-a-half for overtime hours in excess of 40 hours per week is unenforceable. *City of Billings v. Smith*, 158 M 197, 490 P 2d 221.

41-2303.1. Minimum wages of firefighters in cities of first and second class. From and after July 1, 1975, there shall be paid to each duly

appointed and confirmed member of the fire department of cities or towns of the first and second class of the state of Montana, a minimum wage for a daily service of eight (8) consecutive hours of work of at least seven hundred dollars (\$700) per month for the first year of service, and thereafter of at least seven hundred dollars (\$700) minimum per month plus one percent (1%) of said minimum base monthly salary for each additional year of service. After July 1, 1976, there shall be paid to each duly appointed and confirmed member of the fire department of cities or towns of the first and second class of the state of Montana, a minimum wage for a daily service of eight (8) consecutive hours of work of at least seven hundred fifty dollars (\$750) per month for the first year of service, and thereafter of at least seven hundred fifty dollars (\$750) per month plus one percent (1%) of said minimum base monthly salary for each additional year of service.

History: En. Sec. 1, Ch. 293, L. 1947; amd. Sec. 1, Ch. 51, L. 1951; amd. Sec. 1, Ch. 62, L. 1957; amd. Sec. 1, Ch. 267, L. 1967; amd. Sec. 1, Ch. 342, L. 1969; amd. Sec. 1, Ch. 460, L. 1973; amd. Sec. 1, Ch. 324, L. 1975; Sec. 11-1932, R. C. M. 1947; redes. 41-2303.1 by Sec. 1, Ch. 448, L. 1977.

Amendments

The 1969 amendment substituted "1969" for "1967," deleted "or second" between "cities or towns of the first" and "class," raised the minimum wage of firemen in first class cities from \$400 per month to \$525; and added the second sentence, raising the minimum wage of firemen in second class cities from \$400 per month to \$475.

The 1973 amendment changed the effective date of the act from July 1, 1969 to July 1, 1973; increased the minimum monthly wage in first class cities from \$525 to \$600, and in second class cities from \$475 to \$600.

The 1975 amendment increased the minimum wage from \$600 to \$700 after July 1, 1975, in the first sentence, and from \$600 to \$750 after July 1, 1976, in the second sentence; substituted "cities or towns of the first and second class" for "cities or towns of the first class" in the first sentence, and for "cities of the second class" in the second sentence; deleted "up to and including the twentieth year of such additional service" at the end of both sentences; and made minor changes in phraseology.

The 1977 amendment renumbered the section.

Funding

Section 2 of Ch. 324, Laws 1975 read "In compliance with section 43-517, R. C. M. 1947, the administration of this act is declared a public purpose of a city or town which may be paid out of the general fund of the governing body and financed by a levy on the taxable value of property within the city or town."

41-2303.2. Exceptions. The provisions of chapter 23 relating to the payment of a rate of compensation of not less than 1½ times the hourly wage for employment in excess of 40 hours in a work week shall not apply to employment of appointed and confirmed members of a fire department of cities and towns unless such compensation is agreed upon in a collective bargaining agreement.

History: En. 41-2303.2 by Sec. 2, Ch. 448, L. 1977.

Title of Act

An act to renumber section 11-1932, R.C.M. 1947; providing for the minimum wages of firemen in cities of first and

second class and overtime requirements; and providing an immediate effective date.

Effective Date

Section 3 of Ch. 448, Laws 1977 provided the act should be effective on its passage and approval. Approved April 19, 1977.

41-2304. Exclusions. The provisions of section 41-2303 of this act shall not apply with respect to:

(a) Students participating in a distributive education program established under the auspices of an accredited educational agency.

(b) Persons employed in private homes whose duties consist of menial chores such as baby sitting, mowing lawns, cleaning sidewalks.

(c) Persons employed directly by the head of a household to care for children dependent upon the head of the household.

(d) Immediate members of the family of an employer or persons dependent upon an employer for half or more of their support in the customary sense of being a "dependent."

(e) Any persons not regular employees thereof who voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis.

(f) Handicapped workers (1) engaged in work which is incidental to training or evaluation programs or (2) whose earning capacity is so severely impaired that they are unable to engage in competitive employment.

(g) Apprentices or learners who may be exempted by the commissioner for a period not to exceed thirty (30) days of their employment.

(h) Learners under the age of eighteen (18) who are employed as farm workers, provided that such exclusion shall not exceed a period of one hundred eighty (180) days from their initial date of employment and, further provided that during this exclusion period wages paid such learners may not be less than fifty per cent (50%) of the minimum wage rate established in this act.

(i) Retired or semi-retired persons performing part-time incidental work as a condition of their residence on a farm or ranch.

(j) Any individual employed in a bona fide executive, administrative, or professional capacity as these terms are defined and delimited by regulations of the commissioner.

(k) Any individual employed by the United States of America.

History: En. Sec. 4, Ch. 417, L. 1971;
amd. Sec. 19, Ch. 94, L. 1973.

Amendments

The 1973 amendment reduced the age specified near the beginning of subdivision (h) from 19 to 18 years.

Law Enforcement Officers

Subdivision (j) was not intended by the legislature to include policemen, firemen, and deputy sheriffs within the terms of "bona fide executives, administrative, or professional capacity." City of Billings v. Smith, 158 M 197, 490 P 2d 221.

41-2305. Regulations. The commissioner shall make and revise administrative regulations to carry out the purposes of this act. Such regulations shall take effect upon publication by the commissioner. Any person who is aggrieved by an administrative regulation may obtain a hearing before the commissioner upon filing written protest with the commissioner who shall thereupon set such matter for hearing in the county of residence of such protestant within thirty (30) days after receipt of such protest. After such hearing, the commissioner shall promulgate such further administrative regulations as the evidence produced at said hearing shall justify.

History: En. Sec. 5, Ch. 417, L. 1971.

41-2306. Enforcement. Enforcement of this act shall be treated as a wage claim action and shall be in accordance with sections 41-1301 through 41-1324, R. C. M. 1947, as amended. The commissioner may enforce this act without the necessity of a wage assignment.

History: En. Sec. 6, Ch. 417, L. 1971; amd. Sec. 2, Ch. 363, L. 1973.	Amendments The 1973 amendment added the second sentence.
---	--

41-2307. Provisions cumulative. The provisions of this act shall be in addition to other provisions now provided by law for the payment and collection of wages and salaries, but shall not apply to employees covered by the Fair Labor Standards Act.

History: En. Sec. 7, Ch. 417, L. 1971; amd. Sec. 3, Ch. 363, L. 1973.	Effective Date Section 4 of Ch. 363, Laws 1973 read "This act shall become effective on January 1, 1974."
Amendments The 1973 amendment repeated this section without change.	

CHAPTER 24—EMPLOYMENT OF WOMEN

- Section 41-2401. Policy.
41-2402. Functions of department of labor and industry.
41-2403. Rules of procedure and practice.

41-2401. Policy. This act establishes as an affirmative policy of this state within the department of labor and industry procedures which will enable women to contribute to society according to their fullest possible potential.

History: En. Sec. 1, Ch. 466, L. 1973.	formed in close co-operation with the commission on human rights."
Compiler's Notes Section 2 of Ch. 478, Laws 1975 read "It is the intent of the legislature that the functions in the department of labor delineated in chapter 24 of Title 41, R. C. M. 1947, pertaining to the status of women, shall, where appropriate, be per-	Title of Act An act providing procedures within the department of labor and industry that will enable women to reach their fullest potential of service and contribution to society.

41-2402. Functions of department of labor and industry. The department of labor and industry shall:

- (1) Conduct studies about the changing employment needs and problems of women in Montana and make recommendations to the governor and the legislative assembly.
- (2) Direct public attention to critical employment problems confronting women as wives, mothers, homemakers and workers.
- (3) Serve as a clearinghouse for information and materials pertinent to programs and services available to assist and advise women on employment and related matters.
- (4) Co-operate with governmental departments and agencies primarily involved in curbing job discrimination and in the expansion of employment rights and opportunities available to the women of this state.

(5) Conduct periodic conferences throughout the state to make women more aware of employment opportunities, programs and services available to them.

(6) Serve as the central, permanent agency for the co-ordination and evaluation of employment programs and services for women of the state and as a planning agency for the development of those services.

(7) Encourage women's organizations and other groups to institute local self-help activities designed to meet women's employment and related needs.

(8) Apply for and receive grants, appropriations or gifts from any federal, state or local agency, private foundation, or individual to carry out the purposes of this act.

History: En. Sec. 2, Ch. 466, L. 1973.

41-2403. Rules of procedure and practice. The commissioner of the department of labor and industry may issue rules of procedure and practice consistent with the Montana Administrative Procedure Act [82-4201 to 82-4225] in order to administer and carry out the purposes of this act.

History: En. Sec. 3, Ch. 466, L. 1973.

CHAPTER 25—EMPLOYMENT OF STRIKEBREAKERS

- Section 41-2501. Recruitment by third parties.
 41-2502. Professional strikebreakers prohibited.
 41-2503. Agreements to procure strikebreakers prohibited.
 41-2504. Advertising for strikebreakers restricted.
 41-2505. Penalties.

41-2501. Recruitment by third parties. No person, partnership, firm, or officer or agent thereof, may recruit, procure, supply, or refer a professional strikebreaker for employment in place of an employee involved in a labor dispute when such person, partnership, or firm is not a party to the dispute.

History: En. 41-2501 by Sec. 1, Ch. 40, L. 1975. professional strikebreakers in a labor dispute and to limit the right to recruit employees to replace employees involved in a labor dispute.

Title of Act

An act to prohibit the employment of

41-2502. Professional strikebreakers prohibited. (1) An employer involved in a labor dispute may not employ in the place of an employee involved in such dispute a professional strikebreaker who customarily and repeatedly offers himself for employment in the place of employees involved in labor disputes.

(2) A professional strikebreaker who customarily and repeatedly offers himself for employment in place of employees involved in labor disputes may not take or offer to take the place in employment of an employee involved in a labor dispute within the state of Montana.

History: En. 41-2502 by Sec. 2, Ch. 40, L. 1975.

41-2503. Agreements to procure strikebreakers prohibited. No employer involved in a labor dispute may contract or arrange with any other

person, partnership, or firm for the latter to recruit, procure, supply, or refer professional strikebreakers for employment in place of employees involved in the dispute.

History: En. 41-2503 by Sec. 3, Ch. 40, L. 1975.

41-2504. Advertising for strikebreakers restricted. No person, partnership, or firm may recruit, solicit, or advertise for employees, or refer persons to employment, in place of employees involved in a labor dispute, without adequate notice in such advertisement or reference that there is a labor dispute at the place at which employment is offered and that the employment offered is in the place of employees involved in such dispute.

History: En. 41-2504 by Sec. 4, Ch. 40, L. 1975.

41-2505. Penalties. A person convicted of violating sections 41-2501, 41-2502, or 41-2503 shall be punished by a fine of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) or by imprisonment for not less than one (1) nor more than two (2) years. A person convicted of violating section 41-2504 shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or imprisonment for not more than thirty (30) days.

History: En. 41-2505 by Sec. 5, Ch. 40, L. 1975.

Separability Clause

Section 6 of Ch. 40, Laws 1975 read "It is the intent of the legislature that if a part of this act is invalid, all valid parts

that are severable from the invalid part remain in effect. If a part of this act is invalid in one (1) or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

CHAPTER 26—MATERNITY LEAVE

- Section 41-2601. Definitions.
 41-2602. Denial of maternity leave unlawful.
 41-2603. Complaint—how filed.
 41-2604. Enforcement.
 41-2605. Regulations.
 41-2606. Individual action.

41-2601. Definitions. (1) "Commissioner" means the commissioner of labor and industry.

(2) "Employer" means any public or private employer.

History: En. 41-2601 by Sec. 1, Ch. 320, L. 1975.

Title of Act

An act to provide maternity leave to public and private employees.

41-2602. Denial of maternity leave unlawful. (1) It shall be unlawful for an employer or his agent:

- (a) to terminate a woman's employment because of her pregnancy, or
- (b) to refuse to grant to the employee a reasonable leave of absence for such pregnancy, or
- (c) to deny to the employee, who is disabled as a result of pregnancy, any compensation to which she is entitled as a result of the accumulation

of disability or leave benefits accrued pursuant to plans maintained by her employer; provided that the employer may require disability as a result of pregnancy to be verified by medical certification that the employee is not able to perform her employment duties, or

(d) to retaliate against any employee who files a complaint with the commissioner under the provisions of this act, or

(e) to require that an employee take a mandatory maternity leave for an unreasonable length of time.

(2) Upon signifying her intent to return at the end of her leave of absence, such employee shall be reinstated to her original job or to an equivalent position with equivalent pay and accumulated seniority, retirement, fringe benefits, and other service credits unless, in the case of a private employer, the employer's circumstances have so changed as to make it impossible or unreasonable to do so.

History: En. 41-2602 by Sec. 2, Ch. 320, L. 1975.

41-2603. Complaint—how filed. A person claiming to be aggrieved by a violation of section 41-2602 may make, sign, and file a verified complaint with the commissioner of labor and industry which shall state the circumstances of the violation and the particulars thereof and shall contain such other information as may be required by the commissioner. In addition, the commissioner whenever he has reason to believe that section 41-2602 has been or is being violated, may issue a complaint. Within sixty (60) days of the receipt of a complaint the commissioner shall state his findings of fact and decision.

If, upon all the evidence, the commissioner finds that a respondent has engaged in a violation of section 41-2602, he shall state his findings of fact and shall order the respondent to reinstate the complainant if she so desires and to pay to the complainant the damages resulting from the violation. If, upon all the evidence, the commissioner finds that the respondent has not engaged in a violation of section 41-2602, he shall state his findings of fact and shall dismiss the complaint.

History: En. 41-2603 by Sec. 3, Ch. 320, L. 1975.

41-2604. Enforcement. The commissioner or his authorized representatives may enter and inspect such places, question such employees, and investigate such facts, conditions, or matters as they consider appropriate, to determine whether any person has violated any provision of this act or any regulation issued hereunder or which may aid in the enforcement of the provisions of this act.

The commissioner or his authorized representatives may administer oaths and examine witnesses under oath, issue subpoenas, compel the attendance of witnesses, and the production of papers, books, accounts, records, payrolls, documents, and testimony, and take depositions and affidavits in any proceeding before the commissioner.

History: En. 41-2604 by Sec. 4, Ch. 320, L. 1975.

41-2605. Regulations. The commissioner shall make and revise administrative regulations to carry out the purposes of this act. Rule making under this act shall comply with the provisions of the Montana Administrative Procedure Act.

History: En. 41-2605 by Sec. 5, Ch. 320, L. 1975.

41-2606. Individual action. Nothing in this act shall preclude an individual from prosecuting a private action in the district court alleging violation of the provisions of this act or any other act.

History: En. 41-2606 by Sec. 6, Ch. 320, L. 1975.

CHAPTER 27—CONTRACTORS' BONDS FOR WAGES AND BENEFITS

Section 41-2701. Definitions.

41-2702. Contractors—bond required for wages and fringe benefits.

41-2703. Employees—right to sue on bond.

41-2704. Exceptions.

41-2705. Powers of commissioner.

41-2701. Definitions. As used in this act unless the context clearly requires otherwise:

(1) "Commissioner" means the commissioner of labor and industry.

(2) "Contractor" means any person, firm, association, or corporation engaged in the construction business.

History: En. 41-2501 by Sec. 1, Ch. 208, L. 1975. surety bonds to insure workers' wages and fringe benefits; and providing for exceptions.

Title of Act

An act requiring contractors to acquire

41-2702. Contractors—bond required for wages and fringe benefits.

(1) Any contractor who contracts with another to do any work or perform any services for the other, except personal services of the contractor not involving work of hired employees, shall furnish a surety bond or other form of security to the other which shall be:

(a) approved by the commissioner;

(b) in an amount equal to the contractor's average monthly payroll as estimated by the commissioner;

(c) in the name of the state of Montana;

(d) for the purpose of ensuring the wages and fringe benefits of all workers employed by the contractor for the contracted work;

(e) filed with the commissioner within one (1) week of the making of the contract or the commencement of work thereunder, whichever comes first.

(2) Any person contracting with a contractor who fails to require the contractor to acquire the surety bond provided for in subsection (1) is liable to the employees of that contractor for their wages and fringe benefits on that particular job.

(3) Only one (1) bond shall be required on any contractor for each year and when the bond is filed with, and approved by, the commissioner,

the commissioner shall certify to any person contracting with a contractor that the bond is in full force and effect.

History: En. 41-2502 by Sec. 2, Ch. 398, L. 1975.

41-2703. **Employees—right to sue on bond.** Any employee employed by a contractor may bring an action on the surety bond in his own name for unpaid wages and fringe benefits.

History: En. 41-2503 by Sec. 3, Ch. 208, L. 1975.

41-2704. **Exceptions.** (1) The provisions of this act do not apply to any resident contractor who presents to the commissioner a financial statement certified by a licensed certified public accountant attesting to a net worth of the contractor in excess of fifty thousand dollars (\$50,000).

(2) For purposes of this act a resident contractor means any person who is a bona fide resident of this state; any partnership or association, the majority of whose members are bona fide residents of this state; or any corporation organized and existing under the laws of the state of Montana.

History: En. 41-2504 by Sec. 4, Ch. 208, L. 1975.

41-2705. **Powers of commissioner.** The commissioner shall promulgate any rules necessary to carry out the provisions of this act.

History: En. 41-2505 by Sec. 5, Ch. 208, L. 1975.

Separability Clause

Section 6 of Ch. 208, Laws 1975 read

"It is the intent of the legislature that if a part of this act is invalid, all valid parts that are severable from the invalid part, shall remain in force and effect."

TITLE 42—LANDLORD AND TENANT—HIRING

- Chapter 3. Tenants' security deposits, 42-301 to 42-309.
4. Residential Landlord and Tenant Act of 1977, 42-401 to 42-442.

CHAPTER 1—HIRING—IN GENERAL

42-105. (7734) Must repair injuries, etc.

References

Kintner v. Harr, 146 M 461, 408 P 2d 487.

42-109. (7738) When hiring terminates.

Destruction of Subject Matter

Lessee of logging skidder which burned was not liable to lessor for remaining monthly rentals after insurance proceeds

for fair market value of skidder had been paid to lessor. American Mach. Co. v. Johnson, 157 M 226, 483 P 2d 921.

CHAPTER 2—HIRING OF REAL PROPERTY—OF PERSONAL PROPERTY

42-201. (7741) Repealed.

Repeal

Section 42-201 (Sec. 2620, Civ. C. 1895), relating to a lessor making a dwelling

house fit for its purpose, was repealed by Sec. 45, Ch. 313, Laws 1977.

42-202. (7742) When lessees may make repairs, etc.

Damages Denied

Lessee of hotel had the choice of making repairs demanded by fire marshall and deducting costs from the rent payment to the extent of one month's rent, or

vacating the premises, but lessee cannot recover damages from lessors for their failure to put the hotel into good condition. Lowe v. Root, — M —, 531 P 2d 674.

42-203. (7743) Term of hiring when no limit is fixed.

Construction of Oral Farm Lease

Judgment for tenant in action for construction of an oral farm lease was reversed and the case was remanded for a new trial where the evidence was insufficient to show either a mutual agreement or usage and the record was completely confused as to when the lease commenced. Enott v. Hinkle, 140 M 206, 369 P 2d 413, 414.

Notice to Quit

Landlord could not maintain an action for unlawful detainer where notice to quit was not given to tenant thirty days prior to expiration of year to year tenancy. Roseneau Foods, Inc. v. Coleman, 140 M 572, 374 P 2d 87, 91.

Oral Lease

Under this section it is possible to have an oral lease for at least one year without an expression as to time therein. This is consistent with section 13-606, statute of frauds, which voids an oral agreement for the leasing of realty of a period longer than one year. Roseneau Foods, Inc. v. Coleman, 140 M 572, 374 P 2d 87, 89.

Entry by a tenant under an invalid oral lease may create a tenancy from year to year, month to month, or a tenancy at will depending upon the circumstances. Roseneau Foods, Inc. v. Coleman, 140 M 572, 374 P 2d 87, 89.

Presumption as to Term

When tenant, pursuant to an oral agreement, entered into possession of property

on April 1, 1957 to conduct a meat processing and selling business, his hiring of the property was presumed to be for one year from its commencement. *Roseneau Foods, Inc. v. Coleman*, 140 M 572, 374 P 2d 87, 89.

The presumption that hiring is to be for one year is a rebuttable presumption. If the presumption is not controverted, the facts must be found according to the presumption. If it is controverted, the presumption must be given weight as evidence. *Roseneau Foods, Inc. v. Coleman*, 140 M 572, 374 P 2d 87, 90.

Tenancy from Month to Month

Payment of a monthly rental does not compel the conclusion that a tenancy is from month to month where other facts indicate to the contrary. *Roseneau Foods, Inc. v. Coleman*, 140 M 572, 374 P 2d 87, 90.

Tenancy from Year to Year

Where tenant hired property for meat business under an oral agreement the tenancy was initially for a year with implied renewals for one year resulting in a tenancy from year to year. *Roseneau Foods, Inc. v. Coleman*, 140 M 572, 374 P 2d 87, 90.

42-204. (7744) Repealed.

Repeal

Section 42-204 (Sec. 2623, Civ. C. 1895), relating to hiring of lodgings for an in-

definite term, was repealed by Sec. 45, Ch. 313, Laws 1977.

42-205. (7745) Renewal of lease by lessee's continued possession.

Notice to Quit

Where notice to quit was not given by landlord to tenant thirty days prior to expiration of year to year tenancy, tenancy was deemed to be renewed for another year and unlawful detainer action could not be maintained by landlord. *Roseneau Foods, Inc. v. Coleman*, 140 M 572, 374 P 2d 87, 91.

Tenancy from Year to Year

Where property was hired for meat business under section 42-203 the tenancy was initially for a year with implied renewal for one year resulting in a tenancy from year to year. *Roseneau Foods, Inc. v. Coleman*, 140 M 572, 374 P 2d 87, 90.

42-206. (7746) Notice to quit.

Time for Giving Notice

An action in unlawful detainer cannot be maintained under section 93-9703 if the tenant is lawfully in possession under a tenancy from year to year without first

giving notice thirty days prior to the anniversary date of the tenancy. *Roseneau Foods, Inc. v. Coleman*, 140 M 572, 374 P 2d 87, 91.

42-211. (7751) Obligations of letter of personal property.

Lease of Defective Computer

Lessees did not waive their claim to breach of warranty of a defective computer during the time they permitted the lessor to try to repair the defects, since

lessors should have known that the computer was defective and not suitable for the lessee's needs. *Lovely v. Burroughs Corp.*, — M —, 527 P 2d 557.

CHAPTER 3—TENANTS' SECURITY DEPOSITS

Section 42-301. Definitions.

42-302. Application.

42-303. Security deposit—deductions authorized.

42-304. List of damages to leased premises.

42-305. Failure to provide list of damages.

42-306. Wrongfully withholding security deposit—action for.

42-307. Failure of tenant to furnish new address.

42-308. Condition of premises at beginning of lease—failure to furnish list to tenant.

42-309. Waivers and contrary provisions invalid.

42-301. Definitions. As used in this chapter, the following definitions apply:

(1) "Damage" means any and all tangible loss, injury or deterioration of a leasehold premises caused by the willful or accidental acts of the tenant occupying same or by the tenant's family, licensees or invitees, as well as any and all tangible loss, injury or deterioration resulting from the tenant's omissions or failure to perform any duty imposed upon the tenant by law with respect to the leasehold.

(2) "Leasehold premises" means the premises occupied by the tenant together with all common areas, recreational facilities, parking areas and storage facilities to which the tenant has access as well as all personal property owned or controlled by the landlord the use of which is permitted to the tenant.

(3) "Cleaning expenses" means the actual and necessary cost of cleaning done by an owner or his selected representative for cleaning needs not attributable to normal wear brought about by the tenants' failure to bring the premises to the condition it was at the time of renting.

(4) "Security deposit" means value given, in money or its equivalent, to secure the payment of rent by the tenant under a leasehold agreement or to secure payment for damage to and cleaning of the leasehold premises. If a leasehold agreement or an agreement incident thereto requires the tenant or prospective tenant to provide or maintain in effect any deposit to the landlord for part or all of the term of the leasehold agreement, the deposit shall be presumed to be a security deposit.

History: En. 42-301 by Sec. 1, Ch. 219, L. 1974; amd. Sec. 1, Ch. 297, L. 1977.

Title of Act

An act establishing the rights and obligations of landlords and tenants in security deposits.

Amendments

The 1977 amendment inserted "the following definitions apply" near the beginning of the section; inserted subdivision (3); redesignated former subdivision (3) as subdivision (4); and inserted "and cleaning of" in the first sentence of subdivision (4).

42-302. Application. This chapter applies to all rentals of dwellings, including mobile homes but excluding property of public housing authorities.

History: En. 42-302 by Sec. 2, Ch. 219, L. 1974.

42-303. Security deposit—deductions authorized. Any landlord renting property covered by this section may deduct from the security deposit a sum equal to the damage alleged to have been caused by the tenant together with a sum equal to the unpaid rent owing to the landlord at the time of such deduction and a sum for actual cleaning expenses. No cleaning charges may be imposed for normal maintenance performed on a cyclical basis by the landlord as noted by the landlord at the time the tenant occupies the space, unless the landlord is forced to perform this maintenance because of negligence of the tenant. Additionally, no cleaning charges can be deducted until notice has been given to the tenant. The notice shall include the cleaning not accomplished by the tenant, and the additional and type or types of cleaning which needs to be done by the

tenant to bring the premises back to its condition at the time of its renting. After the delivery of the notice the tenant shall have 48 hours to complete the required cleaning. No person may deduct or withhold from the security deposit any amount for purposes other than those set forth in this subsection.

History: En. 42-303 by Sec. 3, Ch. 219, L. 1974; amd. Sec. 2, Ch. 297, L. 1977.

Amendments

The 1977 amendment substituted "actual cleaning expenses" at the end of the first

sentence for "administrative and custodial expenses, which expenses shall not exceed one per cent (1%) of the security deposit"; and inserted the second, third, fourth and fifth sentences.

42-304. List of damages to leased premises. Every landlord, within thirty (30) days subsequent to the termination of a tenancy or within thirty (30) days subsequent to a surrender and acceptance of the leasehold premises, whichever occurs first, shall provide the departing tenant with a written list of any damage and cleaning charges, brought after the provisions of 42-303 have been followed, to the leasehold premises which the landlord alleges is the responsibility of the tenant. Delivery of such list shall be accompanied by payment of the difference, if any, between the security deposit and the permitted charges set forth in section 3 [42-303]. Delivery shall be accomplished by mailing the list and refund to the tenant's last known address or the new address provided by the tenant.

History: En. 42-304 by Sec. 4, Ch. 219, L. 1974; amd. Sec. 3, Ch. 297, L. 1977.

Amendments

The 1977 amendment deleted "verified"

before "written list" in the first sentence; inserted "and cleaning charges, brought after the provisions of 42-303 have been followed" in the first sentence; and added the last sentence.

42-305. Failure to provide list of damages. Any landlord who fails to provide the departing tenant with a written list of damage and cleaning charges as required by section 4 [42-304] shall forfeit all rights to withhold any portion of the security deposit for the damages or cleaning charges.

History: En. 42-305 by Sec. 5, Ch. 219, L. 1974; amd. Sec. 4, Ch. 297, L. 1977.

Amendments

The 1977 amendment deleted "verified"

before "written list"; inserted "and cleaning charges"; and added "for the damages or cleaning charges" to the end of the section.

42-306. Wrongfully withholding security deposit — action for. Any person who wrongfully withholds a residential property security deposit, or any portion thereof, shall be liable in damages to the tenant in a civil action for an amount equal to double the sum determined to have been wrongfully withheld or deducted, the attorney's fees may be awarded the prevailing party at the discretion of the court. The burden of proof of damages caused by the tenant to the leasehold premises shall be on the landlord. No action may be maintained by a tenant for any amount wrongfully withheld or deducted prior to:

(1) the tenant's receipt, from the landlord or his agent, of a written denial of the sum alleged to be wrongfully detained;

(2) the expiration of a thirty (30) day period after the termination of a tenancy; or

(3) the expiration of a thirty (30) day period after surrender and acceptance of the leasehold premises, whichever occurs first.

History: En. 42-306 by Sec. 6, Ch. 219, L. 1974.

42-307. Failure of tenant to furnish new address. Failure by the departing tenant to provide the landlord with his new address in writing upon termination of the tenancy or upon surrender and acceptance of the leasehold premises, whichever occurs first, shall relieve the landlord from double liability as imposed by section 6 [42-306]. Such failure shall not, however, bar the tenant from recovering the actual amount owing to him by the landlord.

History: En. 42-307 by Sec. 7, Ch. 219, L. 1974.

42-308. Condition of premises at beginning of lease—failure to furnish list to tenant. (1) Any person engaged in the rental of property for residential purposes who requires a security deposit shall furnish to each prospective tenant, prior to execution of a lease or creation of a tenancy, a separate written statement as to the present condition of the premises intended to be let, as well as a copy of the written list of damage and cleaning charges, if any, provided to the tenant of the immediately preceding leasehold agreement for the premises in question.

(2) Each written statement of the present condition of a premises intended to be let shall contain, at least, the following:

(a) a clear and concise statement of the present condition of the premises known to the landlord or his agent or which should have been known upon reasonable inspection;

(b) if the premises have never previously been let, a statement indicating such fact;

(c) if any damage to the leasehold premises resulting from the immediately preceding leasehold agreement has not been restored, a statement indicating such fact and setting forth such unrestored damage; and

(d) the signature of the landlord or his agent.

(3) Any person engaged in the rental of property for residential purposes who fails to furnish a prospective tenant, prior to the execution of the lease or creation of the tenancy, with a separate written statement of the present condition of the premises intended to be let and, if any, a written list of damage and cleaning charges provided to the tenant of the immediately preceding leasehold agreement, shall be barred from recovering any sum for damage to or cleaning of the leasehold premises unless he can establish by clear and convincing evidence that the damage occurred during the tenancy in question and was caused by the tenant occupying the leasehold premises or the tenant's family, licensees or invitees.

History: En. 42-308 by Sec. 8, Ch. 219, L. 1974; amd. Sec. 5, Ch. 297, L. 1977.

Amendments

The 1977 amendment deleted "verified"

before "written list" in subsections (1) and (3); inserted "and cleaning charges" in subsections (1) and (3); and inserted "or cleaning of" in subsection (3).

42-309. Waivers and contrary provisions invalid. Any provision of a leasehold agreement, either oral or written, that is contrary to this section shall be invalid. Any attempted waiver of this section by the tenant shall be invalid.

History: En. 42-309 by Sec. 9, Ch. 219,
L. 1974.

CHAPTER 4—RESIDENTIAL LANDLORD AND TENANT ACT OF 1977

- Section 42-401. Short title.
 42-402. Purposes and rules of construction.
 42-403. Supplementary principles of law applicable.
 42-404. Construction against implicit repeal.
 42-405. Administration of remedies—enforcement.
 42-406. Settlement of disputed claim or right.
 42-407. Territorial application.
 42-408. Exclusions from application of chapter.
 42-409. General definitions.
 42-410. Obligation of good faith.
 42-411. Unconscionability.
 42-412. Notice.
 42-413. Terms and conditions of rental agreement.
 42-414. Effect of unsigned or undelivered rental agreement.
 42-415. Prohibited provisions in rental agreements.
 42-416. Separation of rents and obligations to maintain property forbidden.
 42-417. Attorney fees.
 42-418. Disclosure.
 42-419. Landlord to deliver possession of dwelling unit.
 42-420. Landlord to maintain premises.
 42-421. Limitation of liability.
 42-422. Tenant to maintain dwelling unit.
 42-423. Landlord authorized to adopt rules.
 42-424. Access to premises by landlord.
 42-425. Use and occupancy by tenant—extended absence.
 42-426. Noncompliance by the landlord generally.
 42-427. Failure to deliver possession.
 42-428. Damages for minor defects.
 42-429. Purposeful failure to supply heat, water, hot water, or essential services.
 42-430. Landlord's noncompliance as defense to action for possession or rent.
 42-431. Fire or casualty damage.
 42-432. Tenant's remedies for landlord's unlawful ouster, exclusion, or diminution of service.
 42-433. Landlord remedies for noncompliance with rental agreement or failure to pay rent.
 42-434. Failure of tenant to maintain dwelling.
 42-435. Remedies for absence, nonuse, and abandonment.
 42-436. Waiver of landlord's right to terminate.
 42-437. Disposition of personal property abandoned by tenant.
 42-438. Remedy after termination.
 42-439. Recovery of possession limited.
 42-440. Termination of tenancy—holdover remedies.
 42-441. Landlord and tenant remedies for refusal or abuse of access.
 42-442. Retaliatory conduct prohibited.

42-401. Short title. This chapter may be cited as "The Montana Residential Landlord and Tenant Act of 1977".

History: En. 42-401 by Sec. 1, Ch. 313,
L. 1977.

Title of Act

The Montana Residential Landlord and Tenant Act of 1977; repealing sections 42-201 and 42-204, R. C. M. 1947.

42-402. Purposes and rules of construction. (1) This chapter shall be liberally construed and applied to promote its underlying purposes and policies.

(2) Underlying purposes and policies of this chapter are:

(a) to simplify, clarify, modernize, and revise the law governing the rental of dwelling units and the rights and obligations of landlords and tenants; and

(b) to encourage landlords and tenants to maintain and improve the quality of housing.

History: En. 42-402 by Sec. 2, Ch. 313, L. 1977.

42-403. Supplementary principles of law applicable. Unless displaced by the provisions of this chapter, the principles of law and equity, including the law relating to capacity to contract, mutuality of obligations, principal and agent, real property, public health, safety and fire prevention, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating causes, supplement its provisions.

History: En. 42-403 by Sec. 3, Ch. 313, L. 1977.

42-404. Construction against implicit repeal. No part of this chapter is to be construed as impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

History: En. 42-404 by Sec. 4, Ch. 313, L. 1977.

42-405. Administration of remedies—enforcement. (1) The remedies provided by this chapter shall be so administered that an aggrieved party may recover appropriate damages. The aggrieved party has a duty to mitigate damages.

(2) A right or obligation declared by this chapter is enforceable by action unless the provision declaring it specifies a different and limited effect.

History: En. 42-405 by Sec. 5, Ch. 313, L. 1977.

42-406. Settlement of disputed claim or right. A claim or right arising under this chapter or on a rental agreement, if disputed in good faith, may be settled by agreement.

History: En. 42-406 by Sec. 6, Ch. 313, L. 1977.

42-407. Territorial application. This chapter applies to, regulates, and determines rights, obligations, and remedies under a rental agreement, wherever made, for a dwelling unit located within this state.

History: En. 42-407 by Sec. 7, Ch. 313, L. 1977.

42-408. Exclusions from application of chapter. Unless created to avoid the application of this chapter, the following arrangements are not governed by this chapter:

- (1) residence at a public or private institution if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar service;
- (2) occupancy under a contract of sale of a dwelling unit or the property of which it is a part if the occupant is the purchaser or a person who succeeds to his interest;
- (3) occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization;
- (4) transient occupancy in a hotel or motel;
- (5) occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative;
- (6) occupancy under a rental agreement covering premises used by the occupant primarily for commercial or agricultural purposes;
- (7) occupancy by an employee of a landlord whose right to occupancy is conditional upon employment in and about the premises; and
- (8) occupancy outside a municipality under a rental agreement which includes hunting, fishing, or agricultural privileges along with the use of the dwelling unit.

History: En. 42-408 by Sec. 8, Ch. 313,
L. 1977.

42-409. General definitions. Subject to additional definitions contained in subsequent sections and unless the context otherwise requires, in this chapter the following definitions apply:

- (1) "Action" includes recoupment, counterclaim, set-off suit in equity, and any other proceeding in which rights are determined, including an action for possession.
- (2) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence, or sleeping place by a person who maintains a household or by two or more persons who maintain a common household. "Dwelling unit", in the case of a person who rents space in a mobile home park but does not rent the mobile home, means the space rented and not the mobile home itself.
- (3) "Good faith" means honesty in fact in the conduct of the transaction concerned.
- (4) "Landlord" means the owner, lessor, or sublessor of the dwelling unit or the building of which it is a part and also means a manager of the premises who fails to disclose his managerial position.
- (5) "Organization" includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, and any other legal or commercial entity.
- (6) "Owner" means one or more persons, jointly or severally, in whom is vested:

- (a) all or part of the legal title to property ; or
- (b) all or part of the beneficial ownership and a right to present use and enjoyment of the premises, including a mortgagee in possession.
- (7) "Person" includes an individual or organization.
- (8) "Premises" means a dwelling unit and the structure of which it is a part, the facilities and appurtenances therein, and the grounds, areas, and facilities held out for the use of tenants generally or promised for the use of a tenant.
- (9) "Rent" means all payments to be made to the landlord under the rental agreement.
- (10) "Rental agreement" means all agreements, written or oral, and valid rules adopted under 42-423 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.
- (11) "Roomer" means a person occupying a dwelling unit that does not include a toilet, a bathtub or a shower, a refrigerator, a stove, or a kitchen sink, all of which are provided by the landlord and one or more of these facilities are used in common by occupants in the structure.
- (12) "Single family residence" means a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it is a single family residence if it has direct access to a street or thoroughfare and shares neither heating facilities, hot water equipment, nor any other essential facility or service with another dwelling unit.
- (13) "Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others.

History: En. 42-409 by Sec. 9, Ch. 313,
L. 1977.

42-410. Obligation of good faith. Every duty under this chapter and every act which must be performed as a condition precedent to the exercise of a right or remedy under this chapter imposes an obligation of good faith in its performance or enforcement.

History: En. 42-410 by Sec. 10, Ch. 313,
L. 1977.

42-411. Unconscionability. (1) If the court, as a matter of law, finds that:

- (a) a rental agreement or any provision thereof is unconscionable, the court may refuse to enforce the agreement or enforce the remainder of the agreement without the unconscionable provision to avoid an unconscionable result ; or
- (b) a settlement in which a party waives or agrees to forego a claim or right under this chapter or under a rental agreement is unconscionable, the court may refuse to enforce the settlement, enforce the remainder of the settlement without the unconscionable provision, or limit the application of any unconscionable provision to avoid an unconscionable result.

(2) If unconscionability is put into issue by a party or by the court upon its own motion, the parties shall be afforded a reasonable opportunity

to present evidence as to the setting, purpose, and effect of the rental agreement or settlement to aid the court in making the determination.

History: En. 42-411 by Sec. 11, Ch. 313,
L. 1977.

42-412. Notice. (1) A person has notice of a fact if:

- (a) he has actual knowledge of it;
- (b) in the case of a landlord, it is delivered at the place of business of the landlord through which the rental agreement was made; or
- (c) in the case of a landlord or tenant, it is delivered in hand to the landlord or tenant or mailed by registered or certified mail to him at the place held out by him as the place for receipt of the communication or, in the absence of such designation, to his last known address.

(2) Notice received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to his attention if the organization had exercised reasonable diligence.

History: En. 42-412 by Sec. 12, Ch. 313,
L. 1977.

42-413. Terms and conditions of rental agreement. (1) A landlord and a tenant may include in a rental agreement terms and conditions not prohibited by this chapter or other rule or law, including rent, term of the agreement, and other provisions governing the rights and obligations of the parties.

(2) Unless the rental agreement provides otherwise:

- (a) the tenant shall pay as rent the fair rental value for the use and occupancy of the dwelling unit as determined by the landlord;
- (b) rent is payable at the landlord's address;
- (c) periodic rent is payable at the beginning of a term of a month or less and otherwise in equal monthly installments at the beginning of each month;
- (d) rent is uniformly apportionable from day to day; and
- (e) the tenancy is week to week in the case of a roomer who pays weekly rent and in all other cases month to month.

(3) Rent is payable without demand or notice at the time and place agreed upon by the parties or provided for by subsection (2) of this section.

History: En. 42-413 by Sec. 13, Ch. 313,
L. 1977.

42-414. Effect of unsigned or undelivered rental agreement. (1) If the landlord does not sign and deliver a written rental agreement signed and delivered to him by the tenant, acceptance of rent without reservation by the landlord gives the rental agreement the same effect as if it had been signed and delivered by the landlord.

(2) If the tenant does not sign and deliver a written rental agreement signed and delivered to him by the landlord, acceptance of possession

and payment of rent without reservation gives the rental agreement the same effect as if it had been signed and delivered by the tenant.

(3) If a rental agreement given effect by the operation of this section provides for a term longer than 1 year, it is effective for only 1 year.

History: En. 42-414 by Sec. 14, Ch. 313,
L. 1977.

42-415. Prohibited provisions in rental agreements. (1) A rental agreement may not provide that a party:

- (a) agrees to waive or forego rights or remedies under this chapter;
- (b) authorizes any person to confess judgment on a claim arising out of the rental agreement; or
- (c) agrees to the exculpation or limitation of liability resulting from the other party's purposeful misconduct or negligence or to indemnify the other party for that liability or the costs or attorney's fees connected therewith.

(2) A provision prohibited by subsection (1) included in a rental agreement is unenforceable. If a party purposefully uses a rental agreement containing provisions known by him to be prohibited, the other party may recover, in addition to his actual damages, an amount up to 3 months' periodic rent.

History: En. 42-415 by Sec. 15, Ch. 313,
L. 1977.

42-416. Separation of rents and obligations to maintain property forbidden. A rental agreement or a document related thereto may not permit the receipt of rent free of the obligation to comply with 42-420.

History: En. 42-416 by Sec. 16, Ch. 313,
L. 1977.

42-417. Attorney fees. In an action on a rental agreement or arising under this chapter, reasonable attorney fees, together with costs and necessary disbursements, may be awarded to the prevailing party notwithstanding an agreement to the contrary. As used in this section, "prevailing party" means the party in whose favor final judgment is rendered.

History: En. 42-417 by Sec. 17, Ch. 313,
L. 1977.

42-418. Disclosure. (1) A landlord or a person authorized to enter into a rental agreement on his behalf shall disclose to the tenant in writing at or before the commencement of the tenancy the name and address of:

- (a) the person authorized to manage the premises; and
- (b) the owner of the premises or a person authorized to act for the owner for the purpose of service of process and receiving notices and demands.

(2) The information required to be furnished by this section shall be kept current and in writing, and this section extends to and is enforceable against any successor landlord, owner, or manager.

(3) A person who fails to comply with subsection (1) becomes an agent of each person who is a landlord for:

(a) the purpose of service of process and receiving notices and demands; and

(b) the purpose of performing the obligations of the landlord under this chapter and under the rental agreement and expending or making available for that purpose all rent collected from the premises.

History: En. 42-418 by Sec. 18, Ch. 313, L. 1977.

42-419. Landlord to deliver possession of dwelling unit. At the commencement of the term, a landlord shall deliver possession of the premises to the tenant in compliance with the rental agreement and 42-420. A landlord may bring an action for possession against a person wrongfully in possession.

History: En. 42-419 by Sec. 19, Ch. 313, L. 1977.

42-420. Landlord to maintain premises. (1) A landlord shall:

(a) comply with the requirements of applicable building and housing codes materially affecting health and safety in effect at the time of original construction in all dwelling units where construction is completed after the effective date of this act;

(b) make repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;

(c) keep all common areas of the premises in a clean and safe condition;

(d) maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by him;

(e) provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal; and

(f) supply running water and reasonable amounts of hot water at all times and reasonable heat between October 1 and May 1, except if the building that includes the dwelling unit is not required by law to be equipped for that purpose or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant.

(2) If the duty imposed by subsection (1)(a) of this section is greater than a duty imposed by subsections (1)(b) through (1)(f), a landlord's duty shall be determined by reference to subsection (1)(a).

(3) A landlord and tenant of a one-, two-, or three-family residence may agree in writing that the tenant perform the landlord's duties specified in subsections (1)(e) and (1)(f) of this section and specified repairs, maintenance tasks, alteration, and remodeling but only if the transaction

is entered into in good faith and not for the purpose of evading the obligations of the landlord.

(4) A landlord and tenant of a one-, two-, or three-family residence may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only if:

(a) the agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord and is set forth in a separate writing signed by the parties and supported by adequate consideration;

(b) the work is not necessary to cure noncompliance with subsection (1)(a) of this section; and

(c) the agreement does not diminish the obligation of the landlord to other tenants in the premises.

History: En. 42-420 by Sec. 20, Ch. 313, L. 1977.

42-421. Limitation of liability. (1) Unless otherwise agreed, a landlord who conveys, in a good faith sale to a bona fide purchaser, premises that include a dwelling unit subject to a rental agreement is relieved of liability under the rental agreement and this chapter as to events occurring after written notice to the tenant of the conveyance. He remains liable to the tenant for all security recoverable by the tenant pursuant to 42-301 through 42-309 and all prepaid rent.

(2) Unless otherwise agreed, a manager of premises that include a dwelling unit is relieved of liability under the rental agreement and this chapter as to events occurring after written notice to the tenant of the termination of his management.

History: En. 42-421 by Sec. 21, Ch. 313, L. 1977.

42-422. Tenant to maintain dwelling unit. (1) A tenant shall:

(a) comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;

(b) keep that part of the premises that he occupies and uses as reasonably clean and safe as the condition of the premises permit;

(c) dispose from his dwelling unit all ashes, garbage, rubbish, and other waste in a clean and safe manner;

(d) keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;

(e) use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, in the premises;

(f) conduct himself and require other persons on the premises with his consent to conduct themselves in a manner that will not disturb his neighbors' peaceful enjoyment of the premises; and

(g) use the parts of the premises including the living room, bedroom,

kitchen, bathroom, and dining room in a reasonable manner considering the purposes for which they were designed and intended.

(2) A tenant may not destroy, deface, damage, impair, or remove any part of the premises or permit any person to do so.

History: En. 42-422 by Sec. 22, Ch. 313,
L. 1977.

42-423. Landlord authorized to adopt rules. (1) A landlord may adopt a rule concerning the tenant's use and occupancy of the premises. A rule is enforceable against the tenant only if:

(a) its purpose is to promote the convenience, safety, or welfare of the occupants in the premises, preserve the landlord's property from abusive use, or make a fair distribution of services and facilities held out for the tenants generally;

(b) it is reasonably related to the purpose for which it is adopted;

(c) it applies to all occupants in the premises in a fair manner;

(d) it is sufficiently explicit in its prohibition, direction, or limitation of the tenant's conduct to fairly inform him of what he must or must not do to comply;

(e) it is not for the purpose of evading the obligations of the landlord; and

(f) the tenant has notice of it at the time he enters into the rental agreement or when it is adopted.

(2) If a rule is adopted after a tenant enters into a rental agreement that works a substantial modification of his bargain, it is not valid until 7 days after notice to the tenant in the case of a week to week tenancy or 30 days' notice in the case of tenancies from month to month.

History: En. 42-423 by Sec. 23, Ch. 313,
L. 1977.

42-424. Access to premises by landlord. (1) A tenant may not unreasonably withhold consent to the landlord or his agent to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations, or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors.

(2) A landlord may enter the dwelling unit without consent of the tenant in case of emergency.

(3) A landlord may not abuse the right of access or use it to harass the tenant. Except in case of emergency or unless it is impracticable to do so, the landlord shall give the tenant at least 24 hours' notice of his intent to enter and may enter only at reasonable times.

(4) A landlord has no other right of access except:

(a) pursuant to court order;

(b) as permitted by 42-434 and 42-435(2); or

(c) when the tenant has abandoned or surrendered the premises.

History: En. 42-424 by Sec. 24, Ch. 313,
L. 1977.

42-425. Use and occupancy by tenant—extended absence. Unless otherwise agreed, a tenant shall occupy his dwelling unit only as a dwelling unit. The rental agreement may require that the tenant notify the landlord of an anticipated extended absence from the premises in excess of 7 days no later than the first day of the extended absence.

History: En. 42-425 by Sec. 25, Ch. 313,
L. 1977.

42-426. Noncompliance by the landlord generally. (1) Except as provided in this chapter, if there is a noncompliance with 42-420 affecting health and safety, the tenant may:

(a) deliver a written notice to the landlord specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice if the breach is not remedied in 14 days. The rental agreement terminates as provided in the notice subject to the following exceptions:

(i) If the breach is remediable by repairs, the payment of damages, or otherwise and the landlord adequately remedies the breach before the date specified in the notice, the rental agreement does not terminate by reason of the breach.

(ii) If substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within 6 months the tenant may terminate the rental agreement upon at least 14 days' written notice specifying the breach and the date of termination of the rental agreement.

(iii) The tenant may not terminate for a condition caused by himself, a member of his family, or other persons on the premises with his consent.

(b) make repairs himself that do not cost more than 1 month's rent and deduct the cost from the rent if he has given the landlord notice and he has not made the repairs within a reasonable time.

(2) Except as provided in this chapter, the tenant may recover actual damages and obtain injunctive relief for any noncompliance by the landlord with the rental agreement or 42-420.

(3) The remedy provided in subsection (2) of this section is in addition to a right of the tenant arising under subsection (1).

(4) If the rental agreement is terminated, the landlord shall return all security recoverable by the tenant pursuant to 42-301 through 42-309.

History: En. 42-426 by Sec. 26, Ch. 313,
L. 1977.

42-427. Failure to deliver possession. (1) If the landlord fails to deliver possession of the dwelling unit to the tenant as provided in 42-419, rent abates until possession is delivered and the tenant may:

(a) terminate the rental agreement upon at least 5 days' written notice to the landlord and, upon termination, the landlord shall return all prepaid rent and security; or

(b) demand performance of the rental agreement by the landlord and,

if the tenant elects, maintain an action for possession of the dwelling unit against the landlord or a person wrongfully in possession and recover the actual damages sustained by him.

(2) If a person's failure to deliver possession is purposeful and not in good faith, an aggrieved party may recover from that person an amount not more than 3 months' periodic rent or treble damages, whichever is greater.

History: En. 42-427 by Sec. 27, Ch. 313,
L. 1977.

42-428. Damages for minor defects. If the landlord fails to comply with the rental agreement or 42-420 and the reasonable cost of compliance is less than the 1 month's rent, the tenant may recover damages for the breach under 42-426(2).

History: En. 42-428 by Sec. 28, Ch. 313,
L. 1977.

42-429. Purposeful failure to supply heat, water, hot water, or essential services. (1) If contrary to the rental agreement or 42-420 the landlord purposefully or negligently fails to supply heat, running water, hot water, electric, gas, or other essential services, the tenant may give written notice to the landlord specifying the breach and may:

(a) procure reasonable amounts of heat, hot water, running water, electricity, gas, and other essential services during the period of the landlord's noncompliance and deduct their actual and reasonable cost from the rent;

(b) recover damages based upon the diminution in the fair rental value of the dwelling unit; or

(c) procure reasonable substitute housing during the period of the landlord's noncompliance, in which case the tenant is excused from paying rent for the period of the landlord's noncompliance.

(2) If the tenant proceeds under this section, he may not proceed under 42-426 or 42-428 as to that breach.

(3) Rights of the tenant under this section do not arise until he has given notice to the landlord and the landlord has had a reasonable opportunity to correct the conditions or if the conditions were caused by the act or omission of the tenant, a member of his family, or other person on the premises with his consent.

History: En. 42-429 by Sec. 29, Ch. 313,
L. 1977.

42-430. Landlord's noncompliance as defense to action for possession or rent. (1) In an action for possession based upon nonpayment of the rent or in an action for rent when the tenant is in possession, the tenant may counterclaim for any amount he may recover under the rental agreement or this chapter. The court from time to time may order the tenant to pay into court all or part of the rent accrued and thereafter accruing and shall determine the amount due to each party. The party to whom a net amount is owed shall be paid first from the money paid into court

and the balance by the other party. The court may at any time release money paid into the court to either party if the parties so agree or if the court finds a party entitled to the sums released. If no rent remains due after application of this section, judgment shall be entered for the tenant in the action for possession.

(2) In an action for rent when the tenant is not in possession, he may counterclaim as provided in subsection (1) of this section but is not required to pay any rent into court.

History: En. 42-430 by Sec. 30, Ch. 313,
L. 1977.

42-431. Fire or casualty damage. (1) If the dwelling unit or premises are damaged or destroyed by fire or casualty to an extent that enjoyment of the dwelling unit is substantially impaired, the tenant may:

(a) immediately vacate the premises and notify the landlord in writing within 14 days thereafter of his intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating; or

(b) if continued occupancy is lawful, vacate any part of the dwelling unit rendered unusable by the fire or casualty, in which case the tenant's liability for rent is reduced in proportion to the diminution in the fair rental value of the dwelling unit.

(2) This section does not apply when the fire and casualty damage was caused by the purposeful or negligent act of the tenant, the tenant's family, or guests.

(3) If the rental agreement is terminated, the landlord shall return all security recoverable pursuant to 42-301 through 42-309 and all prepaid rent. Accounting for rent in the event of termination or apportionment shall be made as of the date of the fire or casualty.

History: En. 42-431 by Sec. 31, Ch. 313,
L. 1977.

42-432. Tenant's remedies for landlord's unlawful ouster, exclusion, or diminution of service. If a landlord unlawfully removes or excludes the tenant from the premises or purposefully diminishes services to the tenant by interrupting or causing the interruption of heat, running water, hot water, electricity, gas, or other essential services, the tenant may recover possession or terminate the rental agreement and, in either case, recover an amount not more than 3 months' periodic rent or treble damages, whichever is greater. If the rental agreement is terminated, the landlord shall return all security recoverable pursuant to 42-301 through 42-309 and all prepaid rent.

History: En. 42-432 by Sec. 32, Ch. 313,
L. 1977.

42-433. Landlord remedies for noncompliance with rental agreement or failure to pay rent. (1) Except as provided in this chapter, if there is a noncompliance by the tenant with the rental agreement or a noncompliance with 42-422 affecting health and safety, the landlord may deliver a written

notice to the tenant pursuant to 42-412 specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than 14 days after receipt of the notice. If the breach is not remedied within that time, the rental agreement terminates as provided in the notice subject to the following exceptions:

(a) If the breach is remediable by repairs, the payment of damages, or otherwise and the tenant adequately remedies the breach before the date specified in the notice, the rental agreement does not terminate.

(b) If substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within 6 months, the landlord may terminate the rental agreement upon at least 5 days' written notice specifying the breach and the date of the termination of the rental agreement.

(2) If rent is unpaid when due and the tenant fails to pay rent within 3 days after written notice by the landlord of nonpayment and his intention to terminate the rental agreement if the rent is not paid within that period, the landlord may terminate the rental agreement.

(3) Except as provided in this chapter, the landlord may recover actual damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or 42-422. If the tenant's noncompliance is purposeful, the landlord may recover treble damages.

History: En. 42-433 by Sec. 33, Ch. 313, L. 1977.

42-434. Failure of tenant to maintain dwelling. If there is noncompliance by the tenant with 42-422 affecting health and safety that can be remedied by repair, replacement of a damaged item, or cleaning and the tenant fails to comply as promptly as conditions require in case of emergency or within 14 days after written notice by the landlord specifying the breach and requesting that the tenant remedy it within that period of time, the landlord may enter the dwelling unit and cause the work to be done in a workmanlike manner and submit an itemized bill for the actual and reasonable cost, the fair and reasonable cost, or the fair and reasonable value thereof as rent on the next date periodic rent is due or, if the rental agreement has terminated, for immediate payment.

History: En. 42-434 by Sec. 34, Ch. 313, L. 1977.

42-435. Remedies for absence, nonuse, and abandonment. (1) If the rental agreement requires the tenant to give notice to the landlord of an anticipated extended absence in excess of 7 days, as provided for in 42-425, and the tenant fails to do so, the landlord may recover actual damages from the tenant.

(2) During an absence of the tenant in excess of 7 days, the landlord may enter the dwelling unit at times reasonably necessary.

(3) If the tenant abandons the dwelling unit, the landlord shall make reasonable efforts to rent it at a fair rental. If the landlord rents the dwelling unit for a term beginning before the expiration of the rental agreement, the rental agreement terminates as of the date of the tenancy.

If the landlord fails to use reasonable efforts to rent the dwelling unit at a fair rental or if the landlord accepts the abandonment as a surrender, the rental agreement is terminated by the landlord as of the date the landlord has notice of the abandonment. If the tenancy is from month to month or week to week, the term of the rental agreement for this purpose is a month or a week, as the case may be.

History: En. 42-435 by Sec. 35, Ch. 313,
L. 1977.

42-436. Waiver of landlord's right to terminate. Acceptance by the landlord of full payment of rent due with knowledge of a tenant's default or acceptance by the landlord of a tenant's performance that varies from the terms of the rental agreement constitutes a waiver of the landlord's right to terminate the rental agreement for that breach unless otherwise agreed after the breach has occurred. The acceptance of partial payment of rent due does not constitute a waiver of any right.

History: En. 42-436 by Sec. 36, Ch. 313,
L. 1977.

42-437. Disposition of personal property abandoned by tenant. (1) If a tenancy terminates in any manner except by court order and the landlord reasonably believes the tenant has abandoned all personal property which the tenant has left on the premises, the landlord shall:

(a) make reasonable attempts to notify the tenant in writing that the property must be removed:

(i) from the premises; or

(ii) from the place of safekeeping if the landlord has stored the goods as provided in subsection (3) of this section; and

(b) specify a day not less than 15 days after delivery of a notice mailed by certified mail to the last known address of the tenant, at which specified time the property will be disposed of if not removed.

(2) The landlord may dispose of the property by:

(a) selling all or part of the property at a public or private sale; or

(b) destroying or otherwise disposing of all or part of the property if he reasonably believes the value of the property is so low that the cost of storage or sale exceeds the reasonable value thereof.

(3) After notifying the tenant as required by subsection (1) of this section, the landlord shall store all goods, chattels, and personal property of the tenant in a place of safekeeping and shall exercise reasonable care for the property. The landlord may store the property in a commercial storage company, in which case the storage cost includes the actual storage charge plus the cost of removal of the property to the place of storage.

(4) If the tenant, upon receipt of the notice provided in subsection (1) of this section, responds in writing to the landlord on or before the day specified in the notice that he intends to remove his property and does not do so within 15 days after delivery of the tenant's response, the tenant's property shall be conclusively presumed to be abandoned. If the tenant removes the property, the landlord is entitled to reasonable or

actual storage costs for the period the property remains in safekeeping plus the cost of removal of the property to the place of storage.

(5) The landlord is not responsible for any loss to the tenant resulting from storage unless the loss is caused by the landlord's purposeful or negligent act. On the event of purposeful violation, the landlord is liable for double damages.

(6) A public or private sale authorized by this section shall be conducted under the provisions of 87A-9-504(3).

(7) The landlord may deduct from the proceeds of the sale the reasonable costs of notice, storage, and sale and must remit to the tenant the remaining proceeds, if any, together with an itemized accounting. If the tenant cannot after due diligence be found, the remaining proceeds shall be deposited with the county treasurer of the county in which the sale occurred and, if not claimed within 3 years, shall revert to the general fund of the county available for general purposes.

History: En. 42-437 by Sec. 37, Ch. 313,
L. 1977.

42-438. Remedy after termination. If the rental agreement is terminated, the landlord has a claim for possession and for rent and a separate claim for actual damages for any breach of the rental agreement.

History: En. 42-438 by Sec. 38, Ch. 313,
L. 1977.

42-439. Recovery of possession limited. Except in the case of abandonment, surrender, or as permitted in this chapter, a landlord may not recover or take possession of the dwelling unit by action or otherwise, including purposeful diminution of services to the tenant by interrupting or causing the interruption of heat, running water, hot water, electricity, gas, or other essential services.

History: En. 42-439 by Sec. 39, Ch. 313,
L. 1977.

42-440. Termination of tenancy—holdover remedies. (1) The landlord or the tenant may terminate a week-to-week tenancy by a written notice given to the other at least 7 days before the termination date specified in the notice.

(2) The landlord or the tenant may terminate a month-to-month tenancy by giving to the other at any time during the tenancy at least 30 days' notice in writing prior to the date designated in the notice for the termination of the tenancy. The tenancy terminates on the date designated and without regard to the expiration of the period for which, by the terms of the tenancy, rents are to be paid. Unless otherwise agreed, rent is uniformly apportionable from day to day.

(3) If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession. If the tenant's holdover is purposeful and not in good faith, the landlord may recover an amount not

more than 3 months' periodic rent or treble damages, whichever is greater. If the landlord consents to the tenant's continued occupancy, 42-413(2)(e) applies.

History: En. 42-440 by Sec. 40, Ch. 313,
L. 1977.

42-441. Landlord and tenant remedies for refusal or abuse of access.

(1) If the tenant refuses to allow lawful access, the landlord may either obtain injunctive relief to compel access or terminate the rental agreement. In either case the landlord may recover actual damages.

(2) If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner or makes repeated demands for entry otherwise lawful but which have the effect of unreasonably harassing the tenant, the tenant may either obtain injunctive relief to prevent the recurrence of the conduct or terminate the rental agreement. In either case the tenant may recover actual damages.

History: En. 42-441 by Sec. 41, Ch. 313,
L. 1977.

42-442. Retaliatory conduct prohibited. (1) Except as provided in this section, a landlord may not retaliate by increasing rent, decreasing services, or by bringing or threatening to bring an action for possession after the tenant:

(a) has complained of a violation applicable to the premises materially affecting health and safety to a governmental agency charged with responsibility for enforcement of a building or housing code;

(b) has complained to the landlord in writing of a violation under 42-420; or

(c) has organized or become a member of a tenant's union or similar organization.

(2) If the landlord acts in violation of subsection (1) of this section, the tenant is entitled to the remedies provided in 42-432 and has a defense in any retaliatory action against him for possession. In an action by or against the tenant, evidence of a complaint within 6 months before the alleged act of retaliation creates a rebuttable presumption that the landlord's conduct was in retaliation. The presumption does not arise if the tenant made the complaint after notice of a proposed rent increase or diminution of services. For purposes of this section, "rebuttable presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(3) Notwithstanding subsections (1) and (2) of this section, a landlord may bring an action for possession if:

(a) the violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant, a member of his family, or other persons on the premises with his consent;

(b) the tenant is in default in rent; or

(c) compliance with the applicable building or housing code requires

alteration, remodeling, or demolition which would effectively deprive the tenant of use of the dwelling unit.

(4) The maintenance of an action under subsection (3) of this section does not release the landlord from liability under 42-427(2).

History: En. 42-442 by Sec. 42, Ch. 313, L. 1977.

all valid applications that are severable from the invalid applications."

Saving Clause

Section 43 of Ch. 313, Laws 1977 read "Transactions entered into before July 1, 1977, and not extended or renewed on or after that date and the rights, duties, and interests flowing from them remain valid and may be terminated, completed, consummated, or enforced as required or permitted by any statute or other law amended or repealed by this chapter as though the repeal or amendment had not occurred."

Separability Clause

Section 44 of Ch. 313, Laws 1977 read "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in

Repealing Clause

Section 45 of Ch. 313, Laws 1977 read "Sections 42-201 and 42-204, R. C. M. 1947, are repealed."

Summary of act—publication

Section 46 of Ch. 313, Laws 1977 read "The department of community affairs shall prepare a simplified summary version of the major provisions of this act and publish such summary in each daily newspaper of the state twice between 30 and 60 days before July 1, 1977."

Effective Date

Section 47 of Ch. 313, Laws 1977 read "This act is effective on July 1, 1977. It applies to rental agreements entered into, extended, or renewed on and after that date."

TITLE 43—LEGISLATURE AND ENACTMENT OF LAWS

- Chapter
1. Senatorial, representative and congressional districts, 43-108 to 43-118.
 2. The legislative assembly—its composition, organization, officers and employees, 43-202 to 43-202.3, 43-205, 43-206.1, 43-207, 43-208, 43-210.1, 43-214.1, 43-215 to 43-218.1.
 3. The powers, duties and compensation of members, officers and employees of the legislative assembly, 43-310 to 43-310.3, 43-319 to 43-322, 43-324, 43-325.
 4. Witnesses before the legislative assembly, 43-404.
 5. Statutes—their enactment and operation—governor's approval or veto, 43-501 to 43-505, 43-508, 43-516 to 43-522.
 7. Legislative council, 43-709 to 43-711.5, 43-712, 43-713, 43-715 to 43-718, 43-720 to 43-731.
 8. Lobbying, 43-801, 43-803, 43-806.
 9. Legislative proceedings—dissemination, 43-901 to 43-904.
 10. Fiscal notes in legislative bills, 43-1001 to 43-1006.
 11. Legislative Finance Act, 43-1109 to 43-1119.

CHAPTER 1—SENATORIAL, REPRESENTATIVE AND CONGRESSIONAL DISTRICTS

- Section
- 43-108. Decennial selection of reapportionment commission.
 - 43-109. Appointment of commissioners.
 - 43-110. Vacancy.
 - 43-111. Compensation of reapportionment commissioners.
 - 43-112. Technical and clerical services for commission.
 - 43-113. Co-operation of state agencies.
 - 43-114. Public hearing on reapportionment plan.
 - 43-115. Time for submission of plan.
 - 43-116. Legislative recommendations.
 - 43-117. Filing of final plan—dissolution of commission.
 - 43-118. Commissioners ineligible for legislative office.

43-101 to 43-106. (42 to 47) Repealed.

Repeal

These sections (Secs. 110 to 112, Pol. C. 1895; Sec. 2, Ch. 38, L. 1911; Sec. 1, Ch. 6, L. 1921; Sec. 2, Ch. 192, L. 1921; Sec. 1, Ch. 144, L. 1939; Secs. 1 to 4, Ch.

37, L. 1941; Secs. 1, 2, Ch. 191, L. 1951; Secs. 1, 2, Ch. 233, L. 1961), relating to apportionment of legislative representation, were repealed by Sec. 13, Ch. 194, Laws 1967.

43-106.1, 43-106.2. Repealed.

Repeal

Sections 43-106.1, 43-106.2 (Secs. 1, 2, Ch. 194, L. 1967), relating to legislative

apportionment, were repealed by Sec. 5, Ch. 3, Ex. Laws 1971 and by Sec. 6, Ch. 8, 2nd Ex. Laws 1971.

43-106.3 to 43-106.5. Unconstitutional.

Unconstitutional

These sections (Secs. 1, 2, 4, Ch. 3, 1st Ex. L. 1971) were held unconstitutional

by a three-judge federal court in a decision rendered on June 11, 1971, in *Wold v. Anderson*, 327 F Supp 1342.

43-106.6 to 43-106.9. Repealed.

Repeal

Sections 43-106.6 to 43-106.9 (Secs. 1 to 4, Ch. 8, 2nd Ex. L. 1971), relating to leg-

islative apportionment, were repealed by Sec. 1, Ch. 14, Laws 1975.

43-107. (48) Repealed.**Repeal**

Section 43-107 (Ap. p. Sec. 120, Pol C. 1895; Sec. 1, Ch. 44, L. 1917; Sec. 1, Ch. 113, L. 1945; Sec. 1, Ch. 124, L. 1967; Sec.

1, Ch. 87, L. 1971), relating to congressional districts, was repealed by Sec. 1, Ch. 14, Laws 1975.

43-108. Decennial selection of reapportionment commission. During the 1973 legislative session and in each session preceding each federal population census, a commission of five (5) citizens, none of whom may be public officials, shall be selected to prepare a plan for redistricting and reapportioning the state into legislative and congressional districts.

History: En. Sec. 1, Ch. 21, L. 1973.

Title of Act

An act implementing article V, section

14 of the 1972 Montana constitution by providing for a districting and apportionment commission; and providing for an immediate effective date.

43-109. Appointment of commissioners. The majority and minority leaders of each house shall each designate one (1) commissioner. Two commissioners must be residents of the western congressional district and two commissioners must be residents of the eastern congressional district. The majority leader in each house shall have first choice of the congressional district from which he will select a commissioner. Within twenty (20) days after their designation, the four (4) commissioners shall select the fifth member, who shall serve as chairman of the commission. If the four (4) members fail to select the fifth member within the time prescribed, a majority of the supreme court shall select him.

History: En. Sec. 2, Ch. 21, L. 1973.

43-110. Vacancy. In the event a vacancy occurs on the commission, the appointing authority of the vacated seat shall designate a successor.

History: En. Sec. 3, Ch. 21, L. 1973.

43-111. Compensation of reapportionment commissioners. Commissioners are entitled to compensation of twenty dollars (\$20) per day plus travel expenses, as provided for in sections 59-538, 59-539, and 59-801, while attending commission meetings or in carrying out the official duties of the commission.

History: En. Sec. 4, Ch. 21, L. 1973; amd. Sec. 18, Ch. 439, L. 1975.

el expenses, as provided for in sections 59-538, 59-539, 59-801" for "travel and actual expenses."

Amendments

The 1975 amendment substituted "trav-

43-112. Technical and clerical services for commission. The executive director of the legislative council, under the direction of the commission, shall provide the technical staff and clerical services which the commission needs to prepare its districting and apportionment plan.

History: En. Sec. 5, Ch. 21, L. 1973.

43-113. Co-operation of state agencies. Upon request state agencies shall co-operate with the commission and furnish technical assistance and consulting personnel.

History: En. Sec. 6, Ch. 21, L. 1973.

43-114. Public hearing on reapportionment plan. Before the commission submits its plan to the legislature, it shall hold at least one (1) public hearing on the plan at the state capitol. The commission may hold other hearings as it deems necessary.

History: En. Sec. 7, Ch. 21, L. 1973.

43-115. Time for submission of plan. The first commission shall submit its plan to the 1974 legislature by the tenth legislative day; each subsequent commission shall submit its plan to the legislature by the tenth legislative day of the first regular session after its appointment or after the census figures are available.

History: En. Sec. 8, Ch. 21, L. 1973.

43-116. Legislative recommendations. Within thirty (30) days after the commission submits its plan to the legislature, the legislature shall return the plan to the commission with its recommendations.

History: En. Sec. 9, Ch. 21, L. 1973.

43-117. Filing of final plan—dissolution of commission. Within thirty (30) days after receiving the plan and the legislature's recommendations, the commission shall file its final plan with the secretary of state. Upon filing, the plan shall become law and the commission shall be dissolved.

History: En. Sec. 10, Ch. 21, L. 1973.

43-118. Commissioners ineligible for legislative office. A member of the commission may not run for election to a legislative seat within two (2) years after the districting and apportionment plan in which he participated becomes effective.

History: En. Sec. 11, Ch. 21, L. 1973. **Effective Date** provided the act should be in effect from and after its passage and approval. Approved February 8, 1973.

Section 12 of Ch. 21, Laws 1973 pro-

CHAPTER 2—THE LEGISLATIVE ASSEMBLY—ITS COMPOSITION, ORGANIZATION, OFFICERS AND EMPLOYEES

Section 43-202. Term of office.

43-202.1. Purpose.

43-202.2. Disqualifications—candidacy for other offices.

43-202.3. Resignation following election to another office.

43-205. Time and place of meeting.

43-206.1. Rosters prepared from election records.

43-207. Senate, organization of.

43-208. House of representatives, organization of.

43-210.1. Tie votes in organizing.

43-214.1. Officers of the senate and house of representatives.

43-215. Filling vacancies in the legislature—appointment by board of county commissioners—calling of board meeting—election—appointment requirements.

43-216. Alternate method of selection—failure of one candidate to receive majority vote.

43-216.1. Anticipated vacancy.

43-217. "Vacancy" defined.

43-218. Pre-session caucus—compensation and expenses.

43-218.1. Pre-session activity of house appropriations and senate finance and claims committees—compensation and expenses.

43-202. (52) **Term of office.** The term of office of a senator is 4 years or until his successor is elected and qualified and of a representative 2 years or until his successor is elected and qualified; and the term of service thereof shall begin on the first Monday of January next succeeding his election. If a senator is elected to fill a vacancy, his term of service shall begin on the next day after his election.

History: Ap. p. Sec. 151, Pol. C. 1895; re-en. Sec. 51, Rev. C. 1907; amd. Sec. 1, Ch. 17, L. 1909; re-en. Sec. 52, R. C. M. 1921; amd. Sec. 1, Ch. 193, L. 1975; amd. Sec. 1, Ch. 198, L. 1977. Cal. Pol. C. Sec. 226.

stated terms for a senator or a representative "until his successor is elected and qualified."

The 1977 amendment deleted "or representative" after "senator" near the beginning of the second sentence; and made minor changes in phraseology, punctuation and style.

Amendments

The 1975 amendment extended the

43-202.1. **Purpose.** The purpose of this act is to implement the provisions of section 9, Article V, of the Montana constitution.

History: En. 43-202.1 by Sec. 1, Ch. 91, L. 1977.

lature to be candidates for other public office during their legislative term and to implement section 9, article V, of the Montana constitution.

Title of Act

An act to allow members of the legis-

43-202.2. **Disqualifications—candidacy for other offices.** No member of the legislature may, during the term for which he was elected, be appointed to any civil office under the state. A member of the legislature may become a candidate for public office during his term.

History: En. 43-202.2 by Sec. 2, Ch. 91, L. 1977.

43-202.3. **Resignation following election to another office.** A member of the legislature who is elected to other public office shall resign from the legislature prior to assuming the office to which he was newly elected.

History: En. 43-202.3 by Sec. 3, Ch. 91, L. 1977.

43-203, 43-204. (53, 54) **Repealed.**

Repeal

These sections (Secs. 153, 154, Pol. C. 1895), relating to the election of senators.

were repealed by Sec. 13, Ch. 194, Laws 1967.

43-205. (55) **Time and place of meeting.** Each regular session of the legislature shall be convened at the seat of government at 12 noon on the first Monday of January of each odd-numbered year or, if January 1 is a Monday, on the first Wednesday. The legislature shall meet at other times when convened by the governor or by the written request of a majority of the legislators or, when the legislature is in session, by a recorded vote of a majority of the legislators.

History: En. Sec. 160, Pol. C. 1895; re-en. Sec. 55, Rev. C. 1907; re-en. Sec. 55, R. C. M. 1921; amd. Sec. 1, Ch. 279, L. 1973; amd. Sec. 5, Ch. 309, L. 1977. Cal. Pol. C. Sec. 235.

Amendments

The 1973 amendment inserted "except when it is January 1st, then they shall meet on the first Wednesday"; substituted "of each year" for "1897, and each

alternate year thereafter"; added the clauses providing for convening on written request or recorded vote of the members; and made minor changes in phraseology.

The 1977 amendment inserted "regular" before "session" in the first sentence; substituted "on the first Monday

of January of each odd-numbered year or, if January 1 is a Monday, on the first Wednesday" in the first sentence for "on the first Monday except when it is January 1st, then they shall meet on the first Wednesday of January of each year"; and made minor changes in phraseology, punctuation and style.

43-206. (56) Repealed.

Repeal

Section 43-206 (Sec. 1, p. 89, L. 1885; Sec. 161, Pol. C. 1895), making certificate

of election prima facie evidence of right to seat, was repealed by Sec. 4, Ch. 18, Laws 1969.

43-206.1. Rosters prepared from election records. The secretary of state shall prepare certified rosters from the official election records on file in his office for use in the organization of the senate and house of representatives.

History: En. Sec. 1, Ch. 18, L. 1969.

Title of Act

An act to provide that the secretary of state shall prepare a certified roster to be

used in the organization of both houses of the legislature; amending sections 43-207 and 43-208, R. C. M. 1947, and repealing section 43-206, R. C. M. 1947.

43-207. (57) Senate, organization of. At the hour of twelve o'clock, noon, on the day appointed for the meeting of any regular session of the legislative assembly, the president of the senate, or in case of his absence or inability, then the senior member present, must take the chair, call the senators and senators-elect to order, call over the senators from the certified roster prepared by the secretary of state, and then, from the certified roster prepared by the secretary of state, call over the senatorial districts and counties, in their order, from which members have been elected at the preceding election, and after the same are called the members-elect must take the constitutional oath of office and assume their seats. The senate may thereupon, if a quorum is present, proceed to elect its officers.

History: En. H. B. No. 69, p. 103, L. 1897; re-en. Sec. 163, Pol. C. 1895; re-en. Sec. 57, Rev. C. 1907; re-en. Sec. 57, R. C. M. 1921; amd. Sec. 2, Ch. 18, L. 1969. Cal. Pol. C. Sec. 238.

Amendments

The 1969 amendment inserted "call over

* * * secretary of state" after "to order," substituted "from the certified * * * and counties" for "call over the senatorial districts" after "and then," substituted "after the same are called" for "as the same are called," before "the members-elect," and deleted "present their certificates" before "take the constitutional oath of office."

43-208. (58) House of representatives, organization of. At the time specified in section 43-207, the secretary of state, or in case of his absence or inability, then the senior member-elect present, must take the chair, call the members-elect of the house of representatives to order, and then, from the certified roster prepared by the secretary of state, call over the roll of counties and districts; and after the same are called the members-elect must take the constitutional oath of office and assume their seats. The house of representatives may thereupon, if a quorum is present, proceed to elect its officers.

History: En. Sec. 164, Pol. C. 1895; re-en. Sec. 58, Rev. C. 1907; re-en. Sec. 58, R. C. M. 1921; amd. Sec. 3, Ch. 18, L. 1969. Cal. Pol. C. Sec. 239.

Amendments

The 1969 amendment inserted "from the certified * * * secretary of state" after "and then," substituted "after the same"

for "as the same" before "are called," and deleted "present their certificates" before "take the constitutional oath of office."

Repealing Clause

Section 4 of Ch. 18, Laws 1969 read "Section 43-206, R. C. M. 1947, is repealed."

43-210.1. Tie votes in organizing. In the event there is a tie vote for the purposes of organizing the senate or the house of representatives then, for the purposes of organization, the political party's candidate for president of the senate or speaker of the house then having a member of his party as the governor of Montana shall be deemed to be elected.

History: En. Sec. 1, Ch. 25, L. 1973.

Title of Act

An act to designate the president of

the senate or the speaker of the house of representatives should there occur a tie vote for the purposes of organizing either house.

43-211 to 43-214. (61 to 64) Repealed.

Repeal

These sections (Sec. 9, p. 90, L. 1885; Secs. 1 to 3, p. 170, L. 1891; Secs. 1, 2, Ch. 1, L. 1915; Sec. 1, Ch. 44, L. 1937; Sec. 1, Ch. 50, L. 1937; Sec. 1, Ch. 23, L. 1939;

Sec. 1, Ch. 1 and Sec. 1, Ch. 3, L. 1943), relating to officers and employees of the legislative assembly and providing for compelling attendance of legislators, were repealed by Sec. 4, Ch. 1, Laws 1965.

43-214.1. Officers of the senate and house of representatives. (1) The elected officers of the senate include a president, a president pro tempore, a secretary, and a chaplain. A sergeant-at-arms shall be appointed by the committee on committees.

(2) The elected officers of the house of representatives include a speaker, a speaker pro tempore, a chief clerk, and a chaplain. A sergeant-at-arms shall be appointed by the speaker.

(3) All of the foregoing officers shall be elected or appointed by the house in which they are employed.

History: En. 43-214.1 by Sec. 1, Ch. 186, L. 1974; amd. Sec. 1, Ch. 88, L. 1977.

Title of Act

An act establishing certain officers of the legislature and providing that they be elected or appointed by their respective chambers.

Amendments

The 1977 amendment inserted "a president, a president pro tempore" in the first sentence of subsection (1); inserted "a speaker, a speaker pro tempore" in the first sentence of subsection (2); and made minor changes in phraseology and punctuation.

43-215. Filling vacancies in the legislature—appointment by board of county commissioners—calling of board meeting—election—appointment requirements. (1) When a vacancy occurs in the legislature, the vacancy shall be filled by appointment by the board of county commissioners or, in the event of a multicounty district, the boards of county commissioners comprising the district sitting as one appointing board.

(2) The chairman of the board of county commissioners of the county in which the person resided whose vacancy is to be filled shall

call a meeting for the purpose of appointing the member of the legislature, and he shall act as the presiding officer of the meeting.

(3) (a) Whenever the vacancy occurs in the house of representatives, the appointee shall serve until the end of the term to which his predecessor was elected.

(b) Whenever the vacancy occurs in the senate, the appointee shall serve until a successor can be elected as provided in subsection (4).

(4) (a) As used in subsection (4), "term" means the 4-year period to which a senator is normally elected in the absence of a vacancy.

(b) Whenever a vacancy occurs 40 days or more before the general election held during the second year of the term, an individual shall be elected to complete the term at that general election. The election procedure to be used to elect the successor is as follows:

(i) Whenever the vacancy occurs 40 days or more prior to the primary election during the second year, the same procedure as is used for senators who will be elected to full 4-year terms at that general election shall be utilized.

(ii) Whenever the vacancy occurs on or after the 40th day prior to the primary election, any political party desiring to enter a candidate in the general election shall select a candidate as provided in 23-3406. A political party may adopt rules for the conduct of the selection process and shall notify the secretary of state and the appropriate county clerk and recorders of the party nominee. A person desiring to be a candidate as an independent shall follow the procedures provided in subsections (1) through (4) of 23-3318. The petition for an independent candidate shall be filed with the secretary of state on or before the 30th day prior to the general election.

(c) Whenever a vacancy occurs on or after the 40th day prior to the general election held during the second year of the term, the person appointed by the board under subsection (1) shall serve until the end of the term.

(5) (a) Whenever his predecessor served as a member of a political party, the appointee named under subsection (1) shall be a member of the same political party and shall be selected from a list of three individuals provided by the county central committees, acting together, of the counties wherein a portion of the senate district lies. Whenever the appointing board is unable to elect an appointee from the submitted list, they shall request a second list of three names from the county central committees. The second list may not contain any of the names submitted on the first list. The appointing board shall then select an appointee from the individuals named on both lists.

(b) The provisions of subsection (5)(a) do not apply if his predecessor served as an independent.

(6) The appointment of a legislator under this section must take place within 15 days after the vacancy occurs.

History: En. Sec. 1, Ch. 179, L. 1967; either house of the legislative assembly
amd. Sec. 2, Ch. 198, L. 1977. shall be filled by the board or boards of
county commissioners of the county or
counties concerned.

Title of Act

An act to provide that vacancies in

Preamble

Chapter 179, Laws 1967, contained a preamble reading: "Whereas, section 45, Article V of the Montana Constitution, which provides for the filling of vacancies in the legislative assembly has been repealed by an amendment to the Montana Constitution adopted by the electorate at the November 8, 1966 general election."

Amendments

The 1977 amendment inserted subsection designations (1) and (2); substituted "legislature" for "legislative assembly" throughout subsections (1) and (2); and added subsections (3) through (6).

43-216. Alternate method of selection—failure of one candidate to receive majority vote. In the event that a decision cannot be made by the appointing board because of failure of any candidate to receive a majority of the votes, the final decision may be made by lot from the first and second lists of candidates as provided by 43-215(5)(a), or from a list of three individuals if the predecessor served as an independent, in accordance with rules of selection adopted by the appointing board.

History: En. Sec. 2, Ch. 179, L. 1967; amd. Sec. 3, Ch. 198, L. 1977.

Amendments

The 1977 amendment substituted "the first and second lists of candidates as provided by 43-215(5)(a), or from a list of three individuals if the predecessor served as an independent" for "a number of candidates, not exceeding the number of counties comprising the district" near the end of the section.

43-216.1. Anticipated vacancy. (1) Whenever it appears that a vacancy will exist in the legislature because of the inability of an elected legislator to take office at the commencement of the term to which he was elected, an appointee may be selected in advance of the commencement of the term under the provisions of 43-215 and 43-216.

(2) For purposes of determining the term of office of the appointee and the 15-day period of 43-215(6), the vacancy occurs on the first day of the term to which his predecessor was elected.

(3) An appointee under this section may take office only if the vacancy in fact exists at the commencement of the term of office.

History: En. 43-216.1 by Sec. 4, Ch. 215, and 43-216, R. C. M. 1947; and repealing section 59-604, R. C. M. 1947.

Title of Act

An act to provide for the filling of vacancies and anticipated vacancies in the legislature; amending sections 43-202, 43-

Repealing Clause

Section 5 of Ch. 198, Laws 1977 read "Section 59-604, R. C. M. 1947, is repealed."

43-217. "Vacancy" defined. For the purposes of this act, "vacancy" or "vacancies" has the same meaning as prescribed in section 59-602, R.C.M. 1947.

History: En. Sec. 3, Ch. 179, L. 1967.

43-218. Presession caucus—compensation and expenses. (1) As soon after the official canvass as possible, but not later than December 1 of each year following an election when members of the legislature are elected, the majority and minority parties of each house of the legislature shall hold a presession caucus for holdover senators, senators-elect, and representatives-elect. The purpose of the caucus of each party of each house is to elect officers, appoint committees, and hire any necessary employees.

(2) Members of the legislature attending the pre-session caucus are entitled to receive compensation and expenses as provided in 43-310.1.

History: En. Sec. 2, Ch. 274, L. 1969; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 1, Ch. 392, L. 1975; amd. Sec. 19, Ch. 439, L. 1975; amd. Sec. 1, Ch. 103, L. 1977.

Compiler's Notes

Section 23-1814, referred to as amended in the Title of Chapter 274, Laws 1969, was repealed by Sec. 248, Ch. 368, Laws 1969 and no specific amendment of the section appeared in the text of the former Act.

Title of Act

An act to fix the mileage paid legislators traveling to and from sessions and provide that holdover senators, senators-elect, and representatives-elect of the majority and minority parties shall receive mileage for travel to and from the pre-session caucuses; to provide for a pre-session caucus; to provide that members appointed at the caucus to the house appropriations and the senate finance and claims committee shall begin reviewing money requests immediately; to provide that members of these committees, except senators elected at the general election held in 1968, shall receive \$20 per diem for each day engaged in committee business, and all members of these committees shall be reimbursed for actual and necessary expenses incurred in their duties, all per diem and expense payments to be paid by the state controller from the appropriation for operation of the preceding legislative assembly; and to change the state canvass date to permit a caucus December 1 or earlier; amending sections 23-1814 and 43-310, R. C. M. 1947.

Amendments

The 1974 amendment substituted "department of administration" in this section for "state controller."

Chapter 392, Laws of 1975, substituted "legislature" for "legislative assembly" in

three places; deleted "except senators elected at the general election held in 1968" after "Members of these committees" in the next to last sentence; substituted "shall receive a daily salary as provided in section 43-310, R. C. M. 1947, and forty dollars (\$40) per day expenses for each day engaged in committee business" for "shall receive twenty dollars (\$20) per day for each day engaged in committee business, and all members of these committees shall be reimbursed for actual and necessary expenses incurred in their duties" in the next to last sentence; and substituted "Salary" for "Per diem" at the beginning of the last sentence.

Chapter 439, Laws of 1975, substituted "legislature" for "legislative assembly" in three places; deleted "except senators elected at the general election held in 1968" in the next to last sentence; and substituted "shall be reimbursed for travel expenses, as provided for in sections 59-538, 59-539, and 59-801" for "shall be reimbursed for actual and necessary expenses" in the next to last sentence.

The 1977 amendment inserted the subsection (1) designation; substituted subsection (2) for language reading "Members of the house appropriations committee and the senate finance and claims committee named at the caucus shall begin reviewing requests for appropriations immediately and may visit state agencies and institutions to discuss requests. Members of these committees shall receive a daily salary as provided in section 43-310, R. C. M. 1947, and forty dollars (\$40) per day expenses for each day engaged in committee business. Salary and expenses shall be paid by the department of administration from the appropriation for operation of the preceding legislature"; and made minor changes in punctuation and style.

43-218.1. Pre-session activity of house appropriations and senate finance and claims committees—compensation and expenses. (1) Members of the house appropriations committee and of the senate finance and claims committee named at the pre-session caucus may begin reviewing requests for appropriations immediately and may visit state agencies and institutions to discuss requests.

(2) While engaged in pre-session committee business, members of these committees are entitled to receive compensation and expenses as provided in 43-310.1.

History: En. 43-218.1 by Sec. 2, Ch. 103, L. 1977.

Title of Act

An act to make consistent the statutes

on the compensation and expenses paid to legislators; amending sections 43-218, 43-310, 43-310.1, 43-1112, 69-6510, 70-704, 79-2305, and 82-4203.3; repealing sections 43-311 and 43-714; and providing an immediate effective date.

CHAPTER 3—THE POWERS, DUTIES AND COMPENSATION OF MEMBERS, OFFICERS AND EMPLOYEES OF THE LEGISLATIVE ASSEMBLY

Section 43-310. Compensation and expenses for members while in session.

43-310.1. Compensation and expenses when legislature not in session.

43-310.2. Continued participation in public retirement systems.

43-310.3. Participation of legislators in state insurance group.

43-319. Special session convened by governor or majority of members.

43-320. Legislative call of future special session while legislature is in session.

43-321. Request to poll legislators on special session.

43-322. Legislators' ballot to vote on special session.

43-324. Notice of date special session is to convene.

43-325. Effect of failure to approve special session.

43-302, 43-303. (66, 67) Repealed.

Repeal

These sections (Secs. 201, 202, Pol. C. 1895), relating to the secretary of the

senate, the clerk of the house, and their assistants, were repealed by Sec. 4, Ch. 1, Laws 1965.

43-305 to 43-309. (69 to 73) Repealed.

Repeal

These sections (Sec. 6, p. 171, L. 1891; Secs. 204 to 207, 209, Pol. C. 1895; Sec. 3, Ch. 1, L. 1915; Sec. 1, Ch. 210, L. 1943), relating to the sergeants-at-arms, the en-

grossing clerks and enrolling clerks, and other officers and employees of the legislative assembly, were repealed by Sec. 4, Ch. 1, Laws 1965.

43-310. (74) Compensation and expenses for members while in session. (1) Legislators are entitled to a salary commensurate to that of the daily rate of a grade 8, step 1 classified state employee, for those days during which the legislature is in session. The president of the senate and the speaker of the house shall receive an additional \$5 a day in salary for those days during which the legislature is in session.

(2) Legislators are entitled to \$40 a day, 7 days a week, during a legislative session, as reimbursement for expenses incurred in attending a session. Expense payments shall stop when the legislature recesses for more than 3 days and shall resume when the legislature reconvenes.

(3) Legislators are entitled to a mileage allowance as provided in 59-801 for each mile of travel:

(a) to the place of the holding of the session and to return to their place of residence at the conclusion of the session; and

(b) for one additional round trip to their place of residence during each session.

(4) Legislators are not entitled to any additional mileage allowance under (3)(a) or (3)(b) for a special session if it is convened within 7 days of a regular session.

History: En. Sec. 220, Pol. C. 1895; re-en. Sec. 77, Rev. C. 1907; amd. Sec. 1, Ch. 45, L. 1909; re-en. Sec. 74, R. C. M. 1921; amd. Sec. 1, Ch. 23, L. 1955; amd. Sec. 1, Ch. 32, L. 1963; amd. Sec. 1, Ch. 180, L. 1965; amd. Sec. 1, Ch. 274, L. 1969; amd. Sec. 1, Ch. 4, L. 1971; amd. Sec. 1, Ch. 72, L. 1973; amd. Sec. 1, Ch.

5, L. 1975; amd. Sec. 2, Ch. 392, L. 1975; amd. Sec. 20, Ch. 439, L. 1975; amd. Sec. 3, Ch. 103, L. 1977. Cal. Pol. C. Sec. 266.

Amendments

The 1963 amendment increased the mileage allowance from seven to eight cents per mile.

The 1965 amendment designated the former section as subsection (1) and added subsection (2).

The 1969 amendment made subsection (1) provisions applicable to holdover members of the legislature and increased mileage allowance from eight to nine cents per mile, and added subsection (3).

The 1971 amendment increased the reimbursement for expenses specified in subsection (2) from \$15.00 to \$25.00 per day.

The 1973 amendment increased the mileage rate from nine cents to twelve cents per mile in subsection (1); increased the per diem rate from \$25.00 to \$33.00 per day, made the per diem rate applicable seven days per week, and added the second sentence to subsection (2); rewrote subsection (3); added subsection (4); and made minor changes in style and phraseology.

Chapter 5, Laws of 1975, deleted the provisions that legislators be paid weekly.

Chapter 439, Laws of 1975, substituted "a mileage allowance as provided in section 59-801" in subsections (1), (3)(a) and (4) for "twelve cents (12¢) per mile"; and made minor changes in phraseology.

Chapter 392, Laws of 1975, effective January 3, 1977, substitutes "a salary commensurate to that of grade 8, step 1 classified state employee, for the fiscal year during a regular or special session" in subsection (1) for "compensation of twenty dollars (\$20) per legislative day during a session of the legislature"; adds a last sentence to subsection (1) which reads "Legislators may be compensated for one (1) round trip home for each regular and special session, provided, however, that legislators are not entitled to more than one (1) round trip home if a special session is held within seven (7) days of a regular session"; increases the compensation provided for in subsection (2) from \$33 to \$40 per day; and substitutes "forty dollars (\$40) per day expenses" and "a daily salary as provided in section 43-310, R. C. M. 1947" in subdivisions (3)(b) and (3)(c) for "actual expenses" and "compensation of twenty dollars (\$20) per day."

The 1977 amendment substituted sub-

section (1) for "Legislators are entitled to a salary commensurate to that of grade 8, step 1 classified state employee, for the fiscal year during a regular or special session of the legislature, and a mileage allowance as provided in section 59-801 for each mile of travel to and from their residences and the place of holding the session, by the shortest regularly traveled automobile route. Legislators may be compensated for one (1) round trip home for each regular and special session, provided, however, that legislators are not entitled to more than one (1) round trip home if a special session is held within seven (7) days of a regular session"; substituted subsection (3) for "While going to, attending, and returning from legislative standing committee meetings and necessary committee business authorized by the chairmen of the legislative council during the legislative interim, legislators are entitled to: (a) a mileage allowance as provided in section 59-801 for each mile of travel, (b) forty dollars (\$40) per day expenses, and (c) a daily salary as provided in section 43-310, R. C. M. 1947"; substituted subsection (4) for "Legislators are also entitled to a mileage allowance as provided in section 59-801 for travel to and from their respective pre-session caucus meeting"; and made minor changes in phraseology.

Effective Dates

Section 2 of Ch. 4, Laws 1971 read "This bill shall be effective for the Forty-Second Legislative Assembly and all sessions thereafter."

Section 2 of Ch. 72, Laws 1973 read "The rates of per diem, mileage and expenses provided for in this act shall be applicable from and after January 1, 1973."

Section 3 of Ch. 72, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved February 27, 1973.

Section 2 of Ch. 5, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved February 11, 1975.

Section 3 of Ch. 392, Laws 1975 read "This act is effective for pre-session caucuses engaged in by members of the 45th Legislature. In all other affects, this act is effective January 3, 1977."

Temporary Provision

Chapter 1, Laws of 1973, prescribed the duties and compensation of officers and employees of the Forty-Third Legislative Assembly.

43-310.1. Compensation and expenses when legislature not in session. When the legislature is not in session, members of the legislative council,

legislative subcommittees, and select and interim committees, while engaged in committee business authorized by the legislative council, are entitled to:

- (1) a mileage allowance as provided in 59-801;
- (2) expenses as provided in 59-538 and 59-539; and
- (3) a salary equal to $\frac{1}{4}$ the daily rate of a grade 8, step 1 classified state employee, for every 6 hours or fraction thereof spent away from home on committee business.

History: En. Sec. 1, Ch. 224, L. 1973; amd. Sec. 4, Ch. 103, L. 1977.

Title of Act

An act providing that compensation for legislators when engaged in official business during an interim period is computed in quarters of days.

Amendments

The 1977 amendment rewrote this section which read "Salary compensation paid to members of the legislature for performance of their official duties when the legislature is not in session shall be computed in the same manner as per diem is computed under section 59-539."

43-310.2. Continued participation in public retirement systems. (1) The purpose of this section is to provide a means whereby persons serving in the Montana legislature may continue their participation in public retirement systems governed by state law. This section is not intended to provide duplicate credit for the same service in two retirement systems supported wholly or in part by public funds. This section does not affect contribution rates or benefit payments specifically provided for in the laws governing the operation of individual retirement systems.

(2) A person who is engaged in official duties as a member of the Montana legislature and who is otherwise eligible to participate as a member or contributor of a public retirement system governed by state law may, but is not required to, continue his participation in such public retirement system while engaged in his official duties as a legislator.

(3) A legislator who elects to continue participation as provided in subsection (2) shall:

(a) continue his payments into the fund of the retirement system at the rate currently in effect in such system based on his monthly salary as a member of that system; or

(b) continue his payments into the fund of the retirement system at the rate currently in effect in such system based on his monthly salary as a legislator.

(4) The state contribution shall be by legislative appropriation. It shall equal the appropriate employer contribution at the rate currently in effect in the system.

History: En. 43-310.2 by Sec. 1, Ch. 333, L. 1977.

Title of Act

An act to permit legislators to continue to participate in public retirement systems while serving in the Montana legislature; providing an immediate effective date and retroactive application to January 1, 1977.

Retroactive Effect

Section 2 of Ch. 333, Laws 1977 read "In its application to members of the 45th legislature, this act is retroactive to January 1, 1977."

Effective Date

Section 3 of Ch. 333, Laws 1977 provided the act should be effective upon its passage and approval. Approved April 7, 1977.

43-310.3. Participation of legislators in state insurance group. Members of the senate and the house of representatives may enroll in the state employees insurance group during the terms to which they have been elected, without the approval of two-thirds of the appropriate house under 59-1505. The insurer shall enroll and collect employee contributions directly from such legislators. The employer contribution shall be paid from funds appropriated for that purpose.

History: En. 43-310.2 by Sec. 12, Ch. 563, L. 1977.

43-311. (75) Repealed.

Repeal

Section 43-311 (Sec. 221, Pol. C. 1895; Sec. 2, Ch. 45, L. 1909; Sec. 2, Ch. 23, L. 1955), relating to per diem and mileage

of president of senate and speaker of house, was repealed by Sec. 10, Ch. 103, Laws 1977.

43-312 to 43-317. (76 to 78.3) Repealed.

Repeal

These sections (Secs. 222, 223, Pol. C. 1895; Sec. 3, Ch. 45, L. 1909; Sec. 1, Ch. 37, L. 1913; Secs. 4, 5, Ch. 1, L. 1915; Sec. 1, Ch. 115, L. 1917; Secs. 1 to 3, Ch. 112, L. 1927; Sec. 1, Ch. 6, L. 1935; Sec.

2, Ch. 50, L. 1937; Sec. 2, Ch. 1 and Sec. 2, Ch. 3, L. 1943), relating to the compensation of legislative officers and employees and to property of the legislative assembly, were repealed by Sec. 4, Ch. 1, Laws 1965.

43-318. (78.4) Repealed.

Repeal

Section 43-318 (Sec. 4, Ch. 112, L. 1927), relating to removing or defacing

property of the legislature, was repealed by Sec. 31, Ch. 309, Laws 1977.

43-319. Special session convened by governor or majority of members. The legislature may be convened in special session by the governor or at the written request of a majority of the members. The governor or the legislature may limit the special session to the subjects specified in the call.

History: En. Sec. 1, Ch. 433, L. 1973.

Title of Act

An act implementing article V, section 6 of the 1972 Montana constitution by

creating procedures which enable the legislature to call itself into special session; and providing for an immediate effective date.

43-320. Legislative call of future special session while legislature is in session. When the legislature is in session, a majority of the members may by a written request call a special session to meet at a specified time.

History: En. Sec. 2, Ch. 433, L. 1973.

43-321. Request to poll legislators on special session. When the legislature is not in session, any ten (10) members may in writing request the secretary of state to poll the legislators to determine if a majority are in favor of a special session. The request must state:

- (1) the conditions warranting the call of a special session;
- (2) the purposes of the special session; and
- (3) the proposed convening date and time of the special session.

History: En. Sec. 3, Ch. 433, L. 1973.

43-322. Legislators' ballot to vote on special session. Within five (5) days after receiving a request, the secretary of state shall send to all legislators by certified mail a ballot which contains:

- (1) the names of the legislators making the request;
- (2) the reasons for calling the special session;
- (3) the purposes of the special session;
- (4) the requested convening date and time of the special session;
- (5) the date by which legislators must return the ballot which may not be more than thirty (30) days after the date of the mailing of the ballots; and
- (6) a stamped return envelope.

The secretary of state shall keep the ballots secret until all legislators have voted or until the day after the date set for return of the ballots, whichever occurs first.

History: En. Sec. 4, Ch. 433, L. 1973; amd. Sec. 1, Ch. 200, L. 1975.

Repealing Clause

Section 2 of Ch. 200, Laws 1975 read "Section 43-323, R. C. M. 1947, is repealed."

Amendments

The 1975 amendment added the last paragraph.

43-323. Repealed.

Repeal

Section 43-323 (Sec. 5, Ch. 433, L. 1975), relating to legislative call of an im-

mediate special session, was repealed by Sec. 2, Ch. 200, Laws of 1975.

43-324. Notice of date special session is to convene. If a majority of the legislators reply affirmatively to the poll, the secretary of state shall notify each legislator of the time and day on which the special session shall convene.

History: En. Sec. 6, Ch. 433, L. 1973.

43-325. Effect of failure to approve special session. If a majority of the legislators fail to approve the call for a special session within thirty (30) days after the secretary of state mails the ballots or notifies each legislator, all ballots are void and may not be used again. The entire process must be repeated to call the legislature into special session.

History: En. Sec. 7, Ch. 433, L. 1973.

Effective Date

Section 8 of Ch. 433, Laws 1973 pro-

vided the act should be in effect from and after its passage and approval. Approved March 22, 1973.

CHAPTER 4—WITNESSES BEFORE THE LEGISLATIVE ASSEMBLY

Section 43-404. Compelling attendance.

43-404. (82) Compelling attendance. Any witness neglecting or refusing to attend in obedience to a subpoena may be arrested by the sergeant-at-arms and brought before the senate or house. The only warrant of authority necessary to authorize the arrest is a copy of a resolu-

tion of the senate or house, signed by the president of the senate or speaker of the house and countersigned by the secretary or clerk.

History: En. Sec. 263, Pol. C. 1895; re-en. Sec. 98, Rev. C. 1907; re-en. Sec. 82, R. C. M. 1921; amd. Sec. 6, Ch. 309, L. 1977. Cal. Pol. C. Sec. 303.

Amendments

The 1977 amendment inserted "of the senate" after "president" in the second sentence; and made minor changes in phraseology and punctuation.

CHAPTER 5—STATUTES—THEIR ENACTMENT AND OPERATION— GOVERNOR'S APPROVAL OR VETO

- Section 43-501. Bills received by the governor, how endorsed.
 43-502. Approval of bills, line item and amendatory vetoes.
 43-503. Bills returned without approval.
 43-504. Return when legislature not in session.
 43-505. Bills remaining with the governor.
 43-508. "Passage"—meaning of.
 43-516. Enacting clause—form required.
 43-517. Financing new local government duties.
 43-518. Not applicable to certain legislation.
 43-519. Short title.
 43-520. Statement of policy.
 43-521. Delegation of authority defined.
 43-522. Statement of intent in bills—legislative rules for.

43-501. (84) Bills received by the governor, how endorsed. Each bill passed by the legislature, except bills proposing amendments to the Montana constitution, bills ratifying proposed amendments to the United States constitution, resolutions, initiative and referendum measures, shall be submitted to the governor for his signature. Each bill must, as soon as delivered to the governor, be endorsed as follows: "This bill was received by the governor this _____ day of _____, 19 ____." The endorsement must be signed by an assistant authorized by the governor, or by the governor himself.

History: En. Sec. 270, Pol. C. 1895; re-en. Sec. 100, Rev. C. 1907; re-en. Sec. 84, R. C. M. 1921; amd. Sec. 1, Ch. 31, L. 1973. Cal. Pol. C. Sec. 309.

Amendments

The 1973 amendment inserted a new first sentence; substituted "an assistant authorized by the governor" in the final sentence for "the private secretary of the governor"; and made a minor change in phraseology.

43-502. (85) Approval of bills, line item and amendatory vetoes.
 (1) When the governor approves a bill he must set his name thereto, with the date of his approval, and deposit the same in the office of the secretary of state.

(2) If any bill presented to the governor contains several distinct items of appropriation of money, he may disapprove one or more items, while approving other portions of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the items to which he objects, and his objections thereto. The governor must transmit to the house in which the bill originated (or to the secretary of state if the legislature is not in session) a copy of such statement, and the items so objected to must be separately reconsidered in the same manner as bills which have been disapproved by the governor.

(3) The governor may return any bill to the originating house with his recommendations for amendment. Such house shall reconsider the bill under its rules relating to amendment offered in committee of the whole. The bill is then subject to the following procedures:

(a) The originating house shall transmit to the second house, for consideration under its rules relating to amendments in committee of the whole, the bill and the originating house's approval or disapproval of the governor's recommendations.

(b) If both houses approve the governor's recommendations the bill shall be returned to the governor for his reconsideration.

(c) If both houses disapprove the governor's recommendations the bill shall be returned to the governor for his reconsideration.

(d) If one house disapproves the governor's recommendations and the other house approves, then either house may request a conference committee which may be a free conference committee.

(i) If both houses adopt a conference committee report, the bill in accordance with the report shall be returned to the governor for his reconsideration.

(ii) If a conference committee fails to reach agreement or if its report is not adopted by both houses the governor's recommendations shall be considered not approved and the bill shall be returned to the governor for further consideration.

(e) The governor may not return the bill for amendment a second time.

History: En. Sec. 271, Pol. C. 1895; re-en. Sec. 101, Rev. C. 1907; re-en. Sec. 85, R. C. M. 1921; amd. Sec. 1, Ch. 157, L. 1973. Cal. Pol. C. Sec. 310.

Amendments

The 1973 amendment divided the former section into subsections (1) and (2); deleted "if the legislative assembly be in session," and inserted the parenthetical phrase in the last sentence of subsection (2); and added subsection (3).

43-503. (86) Bills returned without approval. (1) A bill or item or items of an appropriations bill become law whenever:

(a) the bill passes both houses of the legislature;

(b) the bill is returned by the governor without his signature and with objections thereto or, if it is a bill containing several items of appropriation of money, with objections to one or more items; and

(c) upon reconsideration the bill or item or items pass both houses by the constitutional majority.

(2) The bill or item or items shall be authenticated by a certificate endorsed on or attached to the bill or the copy of the statement of objections. The form of the certificate shall be: "This bill having been returned by the governor with his objections thereto and, after reconsideration, having passed both houses by the constitutional majority has become a law this _____ day of _____, A.D. _____" or "The following items in the within statement (naming them) having, after reconsideration, passed both houses by the constitutional majority have become a law this _____

day of _____, A.D. _____." The endorsement, signed by the president of the senate and the speaker of the house, is sufficient authentication of the bill or item or items.

(3) The authenticated bill or statement shall be delivered to the governor, who shall deposit it with the laws in the office of the secretary of state.

History: En. Sec. 272, Pol. C. 1895; re-en. Sec. 102, Rev. C. 1907; re-en. Sec. 86, R. C. M. 1921; amd. Sec. 7, Ch. 309, L. 1977. Cal. Pol. C. Sec. 311.

Amendments

The 1977 amendment substantially re-wrote this section. For previous version, see parent volume.

43-504. (87) Return when legislature not in session. (1) If, on the day the governor desires to return a bill without his approval, and with his objections thereto, to the house in which it originated, that house has adjourned for the day (but not for the session), he may deliver the bill with his message to the presiding officer, secretary, clerk, or any member of such house, and such delivery is as effectual as though returned in open session, if the governor, on the first day the house is again in session, by message, notifies it of such delivery, and of the time when and the person to whom such delivery was made.

(2) If the legislature is not in session when the governor vetoes a bill he shall return the bill with his reasons for the veto to the secretary of state. The secretary of state shall immediately mail a copy of the bill and the veto message to each member of the legislature.

(3) The legislature may reconvene to reconsider any bill so vetoed by using the statutory procedure provided for convening in special session.

History: En. Sec. 273, Pol. C. 1895; re-en. Sec. 103, Rev. C. 1907; re-en. Sec. 87, R. C. M. 1921; amd. Sec. 1, Ch. 63, L. 1973. Cal. Pol. C. Sec. 312.

Amendments

The 1973 amendment designated the former provisions as subdivision (1); and added new subdivisions (2) and (3).

43-505. (88) Bills remaining with the governor. (1) A bill which has passed both houses of the legislature and has not been returned by the governor within 5 days after its delivery to him if the legislature is in session or within 25 days if the legislature is adjourned becomes law.

(2) The governor shall deliver the bill to the secretary of state and direct him to authenticate it by a certificate endorsed or attached thereon. The form of the certificate shall be: "This bill having remained with the governor 5 days, and the legislature being in session, it has become a law this _____ day of _____, _____." or "This bill having remained with the governor 25 days, and the legislature being adjourned, it has become a law this _____ day of _____, _____." The certificate shall be signed by the secretary of state and deposited with the laws in his office.

History: En. Sec. 274, Pol. C. 1895; re-en. Sec. 104, Rev. C. 1907; re-en. Sec. 88, R. C. M. 1921; amd. Sec. 1, Ch. 30, L. 1973; amd. Sec. 8, Ch. 309, L. 1977. Cal. Pol. C. Sec. 313.

Amendments

The 1973 amendment substituted "legis-

lature" for "legislative assembly" in the first sentence; inserted "after its delivery to him if the legislature is in session or within twenty-five (25) days if the legislature is adjourned" in the preliminary clause; deleted "(Sundays excepted)" after "five (5) days" in the form; inserted the alternative certification by the secre-

tary of state in the event of the legislature's adjournment; and made minor changes in style.

The 1977 amendment inserted the subsection designations; substituted "The governor shall deliver the bill to the secretary of state and direct him to authenticate it by a certificate endorsed or attached thereon" at the beginning of subsection (2) for "is authenticated by the

governor causing the fact to be certified thereon by the secretary of state"; and made minor changes in phraseology, punctuation and style.

Repealing Clause

Section 2 of Ch. 30, Laws 1973 read "Section 43-506, R. C. M. 1947, is repealed."

43-506. (89) Repealed.

Repeal

Section 43-506 (Sec. 275, Pol C. 1895), relating to the effect of final adjournment

on bills, was repealed by Sec. 2, Ch. 30, Laws 1973. For new law, see sec. 43-505.

43-508. (91) "Passage"—meaning of. "Passage", as used in 43-507, means the enactment into law of a bill which has passed the legislature either with or without the approval of the governor, as provided in the constitution.

History: En. Sec. 3467, C. Civ. Proc. 1895; re-en. Sec. 8075, Rev. C. 1907; re-en. Sec. 91, R. C. M. 1921; amd. Sec. 20, Ch. 100, L. 1973; amd. Sec. 9, Ch. 309, L. 1977.

Amendments

The 1973 amendment deleted "section 12 of article VII of" before "the constitution" at the end of the section.

The 1977 amendment substituted "'Passage', as used 43-507 means" for "The words 'final passage,' as used in the preceding section, shall be held to mean"; substituted "legislature" for "legislative assembly"; and made a minor change in punctuation.

43-511. (94) Repealed.

Repeal

Section 43-511 (Sec. 293, Pol. C. 1895),

relating to construction of statutes, was repealed by Sec. 31, Ch. 309, Laws 1977.

43-512. (95) Repeal of statutes.

Termination of Pending Proceedings

Although under common law repeal of a statute terminated all pending proceedings, priority of plaintiff's petition for appropriation of water, filed before repeal

of the former water law, was an existing right preserved under article IX, section 3(1) of the 1972 Montana constitution. *General Agriculture Corp. v. Moore*, — M —, 534 P 2d 859.

43-514. (97) Repeal of laws creating criminal offenses, etc.

Constitutionality

This section is to be interpreted so as to preserve for prosecution all criminal offenses committed prior to repeal, in absence of an express legislative intent to contrary contained in repealing act, irre-

spective of whether charges are filed before or after such repeal; such interpretation does not violate article III, section 11 of constitution as ex post facto legislation. *State ex rel. Huffman v. District Court*, 154 M 201, 461 P 2d 847.

43-515. (98) Amendatory act, when void.

Inadvertent Repeal

This section applies even though the act sought to be amended has been in-

advertently repealed. *Department of Revenue v. Burlington Northern, Inc.*, — M —, 545 P 2d 1083.

43-516. Enacting clause — form required. The enacting clause of every law shall be as follows: "Be it enacted by the Legislature of the State of Montana:".

History: En. Sec. 1, Ch. 7, L. 1974.

Effective Date

Title of Act

An act requiring every statute to begin with an enacting clause and prescribing the form of that clause; and providing an effective date.

Section 2 of Ch. 7, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved February 5, 1974.

43-517. Financing new local government duties. Any law enacted by the legislature after July 1, 1974, which requires a local government unit to perform an activity or provide a service or facility which will require the direct expenditure of additional funds must provide a means to finance the activity, service or facility. The means of financing such activity may be through a general, all purpose or special levy or through remission of funds by the state of Montana to said local government unit, provided, however, that any requirement in such law that financing be made from the local government unit's levy authority must also provide authority therein to increase said levy by an amount necessary to finance said program, and provided further, that if financing is provided by remission of funds by the state of Montana, such remission shall bear a reasonable relationship to the actual cost of performing the activity or providing the service or facility. The local government unit may refuse to administer or enforce any law which does not comply with the requirements of this section if that law requires an expenditure that would require the local government unit to exceed its statutory levy authority. No subsequent legislation shall be deemed to supersede or modify any provision of this act, whether by implication or otherwise, except to the extent that such legislation shall do so expressly.

History: En. 43-517 by Sec. 1, Ch. 275, L. 1974.

local government to administer any program or provide any service include a method of financing such program or service.

Title of Act

An act requiring that any law requiring

43-518. Not applicable to certain legislation. This act shall not apply to any law under which the required expenditure of additional local funds is incidental to the main purpose of the law.

History: En. 43-518 by Sec. 2, Ch. 275, L. 1974.

43-519. Short title. Sections 43-520 through 43-522 may be cited as the "Legislative History Act".

History: En. 43-519 by Sec. 1, Ch. 560, L. 1977.

Title of Act

An act requiring administrative rules

to conform to legislative intent; providing for the documentation of some legislative intent; amending section 82-4219, R. C. M. 1947.

43-520. Statement of policy. The legislature finds that it must accept the ultimate responsibility for the increase in the discretionary au-

thority of state executive branch agencies, as evidenced by proliferating rules, forms, orders, and licensing proceedings before state agencies. The purpose of this Legislative History Act is to assure that statutes henceforth enacted to grant additional discretionary authority to state agencies are accompanied by a clear indication of the legislature's intent as to how such discretion is to be exercised and the legislature's purpose for delegating the authority.

History: En. 43-520 by Sec. 2, Ch. 560,
L. 1977.

43-521. Delegation of authority defined. As used in 43-522, "delegation of authority" means a statutory authorization to:

- (1) adopt rules implementing a statute; or
- (2) license (as defined in 82-4202) an activity or establishment regulated by statute.

History: En. 43-521 by Sec. 3, Ch. 560,
L. 1977.

43-522. Statement of intent in bills—legislative rules for. The legislature by its joint rules shall provide a procedure by which a statement of legislative intent shall be included with each bill containing a delegation of authority and may be included with all bills. A statement of intent shall be placed before each component of the legislature which sequentially considers the subject bill, and may be amended in the same manner as the bill.

History: En. 43-522 by Sec. 4, Ch. 560,
L. 1977.

CHAPTER 7—LEGISLATIVE COUNCIL

- Section 43-709. Appointment and composition of legislative council—term—vacancies.
 43-710. Powers and duties of council.
 43-711. Executive director, personnel and consultants, functional divisions.
 43-711.1. Printing of the house and senate journals and session laws.
 43-711.2. Distribution of senate and house journals and session laws.
 43-711.3. Publication of laws—index.
 43-711.4. Description of county boundaries included in session laws.
 43-711.5. Expenses incurred, how paid.
 43-712. Power to investigate and examine.
 43-713. Powers relating to hearings.
 43-715. Organization—officers—rules of procedure and records.
 43-716. Appointment and composition of joint subcommittees—officers—powers and duties—vacancies.
 43-717. Legislative committee on priorities—composition—functions.
 43-718. Activities of committees while legislature not in session.
 43-720. Popular name.
 43-721. Establishment of program.
 43-722. Term of service.
 43-723. Number of interns—where from.
 43-724. Selection by schools.
 43-725. Intern qualifications.
 43-726. Assignment of interns.
 43-727. Legislative council—establish guidelines.
 43-728. Interns responsible to sponsor.
 43-729. Program not mandatory.
 43-730. Funding not obligatory.
 43-731. Severability.

43-709. Appointment and composition of legislative council—term—vacancies. (1) There is a legislative council which consists of:

(a) four members of the house of representatives appointed by the speaker of the house with the advice of the majority and minority leaders of the house, no more than two of whom may be of the same political party; and

(b) four members of the senate appointed by the committee on committees of the senate, no more than two of whom may be of the same political party.

(2) Membership on the council is for 2 years and terminates with the appointment of a new council or on the 50th legislative day of the next regular session following the one in which the appointment was made, whichever event occurs first. A new council shall be appointed no later than the 50th day of each regular session.

(3) A vacancy on the legislative council occurring when the legislature is not in session shall be filled by the selection of another member by the same method as the original appointment.

History: En. Sec. 1, Ch. 34, L. 1957; amd. Sec. 1, Ch. 431, L. 1973; amd. Sec. 10, Ch. 309, L. 1977.

Amendments

The 1973 amendment reduced the number of council members from six to four for each house; preserved the even division of party membership; inserted "with the advice of the majority and minority leaders of the house" in the clause relating to appointment of house members; deleted a second sentence relating to time of appointment of the first members; advanced the time for selection of members from the sixtieth to the fiftieth legislative day; provided for termination

of membership on the fiftieth legislative day or on the appointment of a new council, rather than December 31 or the termination of a term of office; provided for the filling of vacancies "by the same method as the original appointment" rather than by the remaining members of the council; and made minor changes in arrangement and phraseology.

The 1977 amendment inserted the subsection and subdivision designations; substituted "next regular session following the one" in the first sentence of subsection (2) for "first regular session following the biennium"; and made minor changes in phraseology, punctuation and style.

43-710. Powers and duties of council. (1) If a question of statewide importance arises when the legislature is not in session and a subcommittee has not been appointed to consider the question, the legislative council shall, with the concurrence of the priorities committee, assign the question to an appropriate subcommittee.

(2) The legislative council shall supervise the activities of the council staff.

(3) The legislative council shall assist in the preparation and submission of all standing and select committee and subcommittee reports and recommendations to the legislature.

(4) This section shall not be construed to permit the council to approve or disapprove of any substantive portions or recommendations of a standing or select committee or subcommittee report.

History: En. Sec. 2, Ch. 34, L. 1957; amd. Sec. 2, Ch. 431, L. 1973; amd. Sec. 11, Ch. 309, L. 1977.

Amendments

The 1973 amendment completely rewrote this section. For prior law, see parent volume.

The 1977 amendment substituted "standing or select committee or subcommittee" in subsection (4) for "standing and select committee and subcommittee"; and made minor changes in phraseology and style.

43-711. Executive director, personnel and consultants, functional divisions. (1) The legislative council may employ an executive director and such other personnel, not members of the council, as it considers necessary to assist in the preparation of proposed legislative acts and standing and select committee and subcommittee reports and recommendations and to carry out other council activities. The council shall fix the compensation of such employees. It may also employ the services of any research agency which it considers necessary in the discharge of its duties.

(2) The legislative council may establish functional divisions within the council staff in order to carry out all of the responsibilities delegated to the council by law or legislative rule. The divisions shall include the following:

- (a) legislative services division:
 - (i) engrossing and enrolling;
 - (ii) mailroom;
 - (iii) printing;
- (b) research and reference services division:
 - (i) general and specialized legislative research;
 - (ii) legislative reference and information, including preparation and publication of the Legislative Review to be sold at the cost of the publication plus postage;
 - (iii) committee staffing when the legislature is not in session;
- (c) legal services division:
 - (i) bill drafting;
 - (ii) legal counseling;
- (d) management and business services division, which shall:
 - (i) maintain bookkeeping records;
 - (ii) sign claims and payrolls;
 - (iii) order all printing, supplies, and equipment; and
 - (iv) serve the house and senate during the session.

History: En. Sec. 3, Ch. 34, L. 1957; amd. Sec. 3, Ch. 431, L. 1973; amd. Sec. 1, Ch. 30, L. 1974; amd. Sec. 12, Ch. 309, L. 1977.

Compiler's Notes

Chapter 12, Laws of 1975, approved February 21, 1975, extended the authority of the legal services division of the legislative council to assign code section numbers and catchlines. The act read: "Section 2, chapter 30, Laws of 1974 is amended to read as follows: 'Section 2. This act is effective on its passage and approval.'"

Amendments

The 1973 amendment divided the section into numbered subsections; substi-

tuted "standing and select committee and subcommittee reports and recommendations" for "its recommendations" in the first sentence of subsection (1); and substituted a new subsection (2) for a paragraph authorizing the appointment and providing for the work of special committees.

The 1974 amendment inserted subdivision (2)(c)(iii); and made a minor change in punctuation.

The 1977 amendment substituted "to carry out other council activities" at the end of the first sentence of subsection (1) for "any other activities"; deleted subdivision (2)(c)(iii) which read "this division is authorized to assign code section numbers and catch lines to bills which have passed both houses without

catch lines or section numbers prior to the enrolling process"; and made minor changes in phraseology and punctuation.

Effective Date

Section 2 of Ch. 30, Laws 1974 read "This act is effective on its passage and

approval but shall be automatically terminated and repealed one (1) year from the date of its approval or upon the passage, approval and implementation of the Montana Codes Commissioner Act, which shall supersede this act."

43-711.1. Printing of the house and senate journals and session laws. In addition to the duties prescribed in section 43-711, the legislative services division of the legislative council shall deliver to the printer entitled to the same, at the earliest day practicable after the final adjournment of each session of the legislative assembly, copies of all laws, resolutions, and journals, kept, passed, or adopted at such session, with proper indexes to the same.

History: En. 43-711.1 by Sec. 3, Ch. 96, L. 1973.

Title of Act

An act to amend sections 82-2202, 82-2203, 82-2208, 82-2211 and 82-2212, R. C. M. 1947, to transfer the functions of

the secretary of state relating to printing and distribution of the house and senate journals and session laws to the legislative services division of the legislative council; deleting from section 82-2210, R. C. M. 1947, references to sidenoting; repealing section 82-2204, R. C. M. 1947.

43-711.2. (135) Distribution of senate and house journals and session laws. (1) Immediately after the senate and house journals and the session laws mentioned in 43-711.1 are bound, the legislative services division of the legislative council shall distribute them.

(2) It shall distribute the house and senate journals as follows:

(a) to each county clerk, one copy of each for the use of the county;

(b) to the state historical library, such number of copies of both, not exceeding 150 of each, as may be required by it for purposes of distribution and exchange;

(c) to the state law librarian, two copies of each for the use of the library and such additional copies as may be necessary for the purposes of exchange;

(d) to the library of congress, two copies of each; and

(e) to the lieutenant governor, each member of the legislature, the secretary of the senate, and the chief clerk of the house of representatives at the session at which the journals were adopted, one copy of each.

(3) It shall distribute the session laws as follows:

(a) to each department of the government at Washington and of the government of this state, one copy;

(b) to the library of congress, eight copies;

(c) to the state library, two copies;

(d) to the state historical library, two copies;

(e) to the state law librarian, four copies for the use of the state law library and such additional copies as may be required for exchange with libraries and institutions maintained by other states, territories, and public libraries;

(f) to the library of each custodial institution, one copy;

(g) to each Montana member of congress, each United States district judge in Montana, each of the judges of the state supreme and district courts, and each of the state officers, one copy;

(h) to the lieutenant governor, each member of the legislature, the secretary of the senate, and the chief clerk of the house of representatives at the session at which the laws were adopted, one copy;

(i) to each of the incorporated colleges of the state and each unit of the state university system, one copy;

(j) to each county clerk, three copies for the use of the county; and

(k) to each county attorney and to each clerk of a district court, one copy.

History: En. Sec. 1, Ch. 86, L. 1907; Sec. 155, Rev. C. 1907; amd. Sec. 1, Ch. 126, L. 1921; re-en. Sec. 135, R. C. M. 1921; amd. Sec. 1, Ch. 22, L. 1929; amd. Sec. 1, Ch. 46, L. 1937; Sec. 82-2203, R. C. M. 1947; redes. 43-711.2 and amd. by Sec. 4, Ch. 96, L. 1973; amd. Sec. 13, Ch. 309, L. 1977.

Amendments

The 1973 amendment renumbered this section, which was formerly section 82-2203; substituted the legislative services division of the legislative council for the secretary of state; substituted the reference in the preliminary paragraph to section 43-711.1 for a reference to former subdivision 9 of section 82-2202; inserted "It shall distribute the house and senate journals as follows:" immediately before the first group of numbered paragraphs; and made minor changes in phraseology.

The 1977 amendment substituted "legislature" in subdivisions (2)(e) and (3)(h) for "legislative assembly"; substituted "state historical library" in subdivision (3)(d) for "state historical and

miscellaneous library"; added the provision for exchange copies to subdivision (3)(e); deleted "to the law libraries and the legislative reference libraries of each of the states and territories such number of copies as are given by them in exchange with the Montana state law library and the legislative reference libraries" after subdivision (3)(e); inserted subdivision (3)(f); substituted "to each Montana member of congress" at the beginning of subdivision (3)(g) for "to the members of congress"; substituted "each United States district judge in Montana" in subdivision (3)(g) for "the United States district judge"; deleted "and journals" after "laws" in subdivision (3)(h); substituted "state university system" in subdivision (3)(i) for "state university and institutions"; deleted "to the law librarian of the state of Montana as many copies as may be required by him for exchange with libraries and institutions maintained by other states, territories and public libraries" at the end of subdivision (3)(i); and made minor changes in phraseology, punctuation and style.

43-711.3. (142) Publication of laws—index. The legislative services division of the legislative council, in pursuance of section 43-711.1, shall cause such laws as are therein specified, except resolutions, memorials, and bills appropriating money, to be printed with the heading of each law,

CHAPTER _____

numbered from 1 upward, using Arabic numerals for such numbering, and it shall omit from the laws the statement "Senate Bill No. _____" and "House Bill No. _____" and hereafter reference to the laws of any legislative session may be made as follows: "Chapter _____ (giving number) of the laws of _____" (giving the year in which same was enacted). Such laws shall be published in their numerical order, from 1 upward, as same have been filed in the office of the secretary of state, and the chapter number shall appear as part of each page heading; provided, that resolutions, memorials, and bills appropriating money

shall be printed in the latter part of the volume containing the said laws, in the form and manner heretofore practiced in publishing such laws; and provided further, in all enrolled bills containing amendments to existing statutes, the new parts having been designated by underlining, shall be printed in italics. The legislative services division of the legislative council shall also have prepared and published with said laws, and bound in the same volume, a suitable index of the same, and an additional index showing what sections of the several codes of this state have been amended, repealed, altered, or changed by any of the laws published in that volume, which shall be known and designated as the "Code Index."

History: En. Sec. 2, Ch. 17, L. 1903; re-en. Sec. 163, Rev. C. 1907; re-en. Sec. 142, R. C. M. 1921; amd. Sec. 1, Ch. 10, L. 1939; Sec. 82-2210, R. C. M. 1947; amd. Sec. 1, Ch. 59, L. 1973; redes. 43-711.3 and amd. by Sec. 5, Ch. 96, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 59, and once by Ch. 96. Neither amendatory act mentioned the other. Since Ch. 96 included the changes made by Ch. 59, the compiler has used the text of Ch. 96.

Amendments

Chapter 59, Laws of 1973, deleted from the second sentence a requirement that the laws be published "in such manner that each section shall have a side head or marginal summary"; and made a minor change in style.

Chapter 96, Laws of 1973, renumbered this section, which was formerly section 82-2210; made the same changes as did

Ch. 59; substituted the legislative services division of the legislative council for the secretary of state at the beginning of the section and at the beginning of the last sentence; substituted the reference to section 43-711.1 near the beginning of the section for a reference to former subdivision 9 of section 82-2202; and made minor changes in phraseology.

Repealing Clause

Section 2 of Ch. 59, Laws 1973 read "Section 82-2204, R. C. M. 1947, is repealed."

Effective Date

Section 3 of Ch. 59, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved February 25, 1973.

Cross-References

Index to session laws, preparation, 44-411.

43-711.4. (143) Description of county boundaries included in session laws. It shall be the duty of the legislative services division of the legislative council to include in the published session laws of the state of Montana a description of the county boundaries of all new counties of the state of Montana created by petition and election, commencing with counties so created on and after January 1, 1921, inserting in each of said session laws such new counties as have been so created since the publication of the acts of the previous session.

History: En. Sec. 1, Ch. 67, L. 1921; re-en. Sec. 143, R. C. M. 1921; Sec. 82-2211, R. C. M. 1947; redes. 43-711.4 and amd. by Sec. 6, Ch. 96, L. 1973.

Amendments

The 1973 amendment renumbered this

section, which was formerly section 82-2211; substituted the legislative services division of the legislative council for the secretary of state; and made a minor change in phraseology.

43-711.5. (144) Expenses incurred, how paid. The expenses incurred by the legislative services division of the legislative council in carrying into effect the provisions of sections 43-711.1 to 43-711.4 inclusive must be paid out of any moneys specially appropriated for the purpose.

History: En. Sec. 409, Pol. C. 1895; re-en. Sec. 164, Rev. C. 1907; re-en. Sec. 144, R. C. M. 1921; Sec. 82-2212, R. C. M. 1947; amd. Sec. 30, Ch. 97, L. 1961; redes. 43-711.5 and amd. by Sec. 7, Ch. 96, L. 1973.

Amendments

The 1973 amendment renumbered this section, which was formerly section 82-2212; substituted the legislative services

division of the legislative council for the secretary of state; and substituted the reference to sections 43-711.1 to 43-711.4 for a reference to sections 82-2202 to 82-2204.

Repealing Clause

Section 8 of Ch. 96, Laws 1973 read "Section 82-2204, R. C. M. 1947, is repealed."

43-712. Power to investigate and examine. The legislative council, on behalf of standing and select committees and subcommittees, shall have authority to investigate and examine into the costs of state governmental activities and may examine and inspect all records, books and files of any department, agency, commission, board or institution of the state of Montana.

History: En. Sec. 4, Ch. 34, L. 1957; amd. Sec. 4, Ch. 431, L. 1973.

Amendments

The 1973 amendment inserted "on be-

half of standing and select committees and subcommittees" near the beginning of the section.

43-713. Powers relating to hearings. (1) In the discharge of its duties on behalf of standing committees and subcommittees, the legislative council may hold hearings, administer oaths, issue subpoenas, compel the attendance of witnesses and the production of papers, books, accounts, documents, and testimony, and cause depositions of witnesses to be taken in the manner prescribed by law for taking depositions in civil actions in district court.

(2) If a person disobeys a subpoena issued by the council on behalf of a standing committee or subcommittee or if a witness refuses to testify on any matters regarding which he may be lawfully interrogated, the district court of any county or a judge thereof shall, on application of the legislative council, compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.

History: En. Sec. 5, Ch. 34, L. 1957; amd. Sec. 5, Ch. 431, L. 1973; amd. Sec. 14, Ch. 309, L. 1977.

Amendments

The 1973 amendment inserted "on behalf of standing committees and subcommittees" near the beginning of the first sentence; and substituted "subpoena is-

sued by the council on behalf of a standing committee or subcommittee" in the second sentence for "subpoena issued on behalf of the council, or any committee thereof."

The 1977 amendment substituted "or" before "a refusal" near the end of the section for "on"; and made minor changes in phraseology, punctuation and style.

43-714. Repealed.

Repeal

Section 43-714 (Sec. 6, Ch. 34, L. 1957; Sec. 6, Ch. 431, L. 1973; Sec. 21, Ch. 439,

L. 1975), relating to legislative expenses, was repealed by Sec. 10, Ch. 103, Laws 1977 and by Sec. 31, Ch. 309, Laws 1977.

43-715. Organization—officers—rules of procedure and records. The legislative council shall organize immediately following appointment by

electing one (1) of its members as its chairman and by electing such other officers from among its membership as the council may deem desirable. The council is empowered to adopt rules of procedure and to make all arrangements for its meetings and to carry out the purpose for which it is created. The council and the subcommittees are directed to keep accurate records of their activities and proceedings.

History: En. Sec. 7, Ch. 34, L. 1957;
amd. Sec. 7, Ch. 431, L. 1973.

Amendments

The 1973 amendment substituted "immediately following appointment" for

"within thirty (30) days after the passage and approval of this act" near the beginning of the first sentence; and substituted "the subcommittees" for "its committees" near the beginning of the last sentence.

43-716. Appointment and composition of joint subcommittees—officers—powers and duties—vacancies. (1) (a) The standing committees of the house and senate shall appoint subcommittees from each body to meet jointly on those bills and resolutions that are designated to them by the priorities committee. The composition of each subcommittee shall be as follows:

(i) four members of the house standing committee appointed by the chairman of the standing committee, no more than two of whom may be of one political party; and

(ii) four members of the senate standing committee appointed by the chairman of the standing committee, no more than two of whom may be of one political party.

(b) The chairman of the standing committee may appoint himself to the subcommittee.

(2) Each subcommittee shall elect its chairman and vice-chairman from among its members. The chairman and vice-chairman may not be members of the same political party.

(3) The subcommittees may perform their functions when the legislature is not in session. The personnel, data, and facilities of the legislative council shall be made available to such subcommittees.

(4) (a) Each subcommittee shall accumulate, compile, analyze, and furnish such information relevant to existing or prospective legislation as it determines, on its own initiative, to be pertinent to important issues of policy and questions of statewide importance, including but not limited to:

(i) the possibilities of consolidations of departments, commissions, boards, and institutions in state government for:

(A) the elimination of unnecessary activities and duplications in office personnel and equipment;

(B) the coordination of activities;

(C) the purpose of increasing efficiency of service or effecting economies; and

(D) the purpose of studying and inquiring into the financial administration of state governments and subdivisions thereof, including the problems of assessment and collection of taxes; and

(ii) all other matters pertaining to the function of the departments and branches of state government.

(b) Each subcommittee shall prepare such bills and resolutions as, in its opinion, the welfare of the state may require for presentation to the next regular session of the legislature.

(c) Each subcommittee shall keep accurate records of its activities and proceedings.

(5) A subcommittee appointed for the purpose of making a study assigned by the priorities committee may make recommendations for legislation. These recommendations and the study report shall be submitted to the legislature at the next regular session.

(6) If a subcommittee member misses more than two committee meetings or hearings without just cause when the legislature is not in session, the member is considered to have resigned and the vacancy shall be filled in the same manner as the original appointment. Any other vacancy shall be filled in the same manner.

History: En. 43-716 by Sec. 8, Ch. 431, L. 1973; amd. Sec. 1, Ch. 44, L. 1974; amd. Sec. 15, Ch. 309, L. 1977.

Title of Act

An act reducing the membership of the legislative council to eight (8) members and providing terms; providing for council organization, powers and duties; providing for appointment of subcommittees; providing for powers and duties of select and standing committees when the legislature is not in session; providing compensation for council members and committees; providing for a priorities committee to determine interim studies; and amending sections 43-709 through 43-715, R. C. M. 1947.

Amendments

The 1974 amendment substituted "may" for "shall" before "be submitted" in the second sentence of subdivision (7); deleted the second sentence from subdivision (8) reading "These recommendations and the study report shall be submitted to the full joint standing committees prior to the legislative session in which the report is to be made for approval by the joint standing committee"; and substituted "These recommendations and the study report shall be submitted" at the beginning of the last sentence of subdivision (8)

for "The approved report and recommendations shall be made."

The 1977 amendment redesignated former subsections (1), (2), (3), (4), (5) and (6) as subsections (1)(a), (1)(b), (2), (3), (4)(a) and (4)(b), respectively; deleted "investigation and study of" at the beginning of subsection (4)(a)(i); substituted "legislature" at the end of subsection (4)(b) for "legislative assembly"; inserted subsection (4)(c); deleted former subsection (7) which read "Any subcommittee appointed for the purpose of considering deferred bills may make recommendations regarding the disposition of such bills. Prior to the next session, these recommendations may be submitted to the standing committee having jurisdiction over the bill when the preceding session was adjourned. After having considered the subcommittee recommendations the standing committee may perfect a committee report on the bill to be presented to the legislature on the first legislative day of the next session"; redesignated former subsections (8) and (9) as subsections (5) and (6); substituted "next regular session" at the end of subsection (5) for "session designated by the resolution or the priorities committee"; and made minor changes in style, phraseology and punctuation.

43-717. Legislative committee on priorities—composition—functions.

(1) There is a legislative committee on priorities which is composed of eight members of the house rules committee, no more than four of whom may be of the same political party, and eight members of the senate rules committee, no more than four of whom may be of the same political party.

(2) The committee on priorities shall be appointed at the same time as all other standing committees.

(3) The committee on priorities shall consider resolutions requesting council studies and all other study requests and establish and prepare a list of priorities from among them. The committee shall transmit the list to the legislative council before the end of each regular session and shall assign the bills and studies to the appropriate standing committees in the order in which the studies and bills appear on the list of priorities. The committee shall assign as many studies and bills as the resources of the council staff allow.

History: En. 43-717 by Sec. 9, Ch. 431, L. 1973; amd. Sec. 16, Ch. 309, L. 1977.

Amendments

The 1977 amendment deleted a former

second sentence of subsection (3) which read "They shall also set priorities on all bills and studies carried over to the second regular session"; and made minor changes in phraseology and style.

43-718. Activities of committees while legislature not in session. During an interim when the legislature is not in session, all regularly appointed standing or select committees of either house not formally discharged prior to the final adjournment of the preceding session shall continue as such committees, and are empowered to continue to sit as such committees as provided in this act.

History: En. Sec. 10, Ch. 431, L. 1973.

Effective Date

Section 12 of Ch. 431, Laws 1973 read "This act is effective upon its passage and

approval, provided that in the first regular session of the 43rd legislative assembly the time limits referred to in this act shall not apply."

43-719. Repealed.

Repeal

Section 43-719 (Sec. 11, Ch. 431, L. 1973), relating to actions of standing com-

mittees, was repealed by Sec. 31, Ch. 309, Laws 1977.

43-720. Popular name. This act shall be known as the "Legislative Intern Act of 1974."

History: En. 43-720 by Sec. 1, Ch. 305, L. 1974.

Title of Act

An act to codify the existence of the

legislative intern program to be known as the "Legislative Intern Act of 1974"; and providing an effective date.

43-721. Establishment of program. It is the public policy of this state that there be a legislative intern program open to students attending the university of Montana, Montana state university, eastern Montana college, northern Montana college, western Montana college, and the Montana college of mineral science and technology. Any private college of higher education in the state may also establish an intern program for the purposes of this act.

History: En. 43-721 by Sec. 2, Ch. 305, L. 1974; amd. Sec. 17, Ch. 309, L. 1977.

Amendments

The 1977 amendment substituted "any private college" at the beginning of the second sentence for "the private colleges"; and made minor changes in phraseology.

43-722. Term of service. Each legislative intern shall serve for ten (10) weeks during the regular session of the legislature.

History: En. 43-722 by Sec. 3, Ch. 305,
L. 1974.

43-723. Number of interns—where from. All institutions referred to in section 2 [43-721] may have at least one intern. An additional five (5) positions may be chosen from applications submitted to the legislative council.

History: En. 43-723 by Sec. 4, Ch. 305,
L. 1974.

43-724. Selection by schools. The legislative interns shall be named by the presidents of the several colleges and universities. The students so selected may be enrolled in any program offered by the college or university.

History: En. 43-724 by Sec. 5, Ch. 305,
L. 1974.

43-725. Intern qualifications. (1) The legislative interns must have the following qualifications:

(a) at least one quarter of "state government" or its equivalent as a course of study at an institution of higher learning;

(b) attainment of at least the level of a junior at an institution of higher learning; and

(c) the necessary degree of scholastic achievement, leadership, and involvement in community affairs.

(2) Preference shall be given to Montana high school graduates.

History: En. 43-725 by Sec. 6, Ch. 305, tainment of" at the beginning of subsection (1)(b) for "reached"; deleted "exhibit" at the beginning of subsection (1)
L. 1974; amd. Sec. 18, Ch. 309, L. 1977.

Amendments

The 1977 amendment substituted "at- (c); and made minor changes in phraseology and style.

43-726. Assignment of interns. Each legislative intern is assigned to a legislator by the legislative council.

History: En. 43-726 by Sec. 7, Ch. 305,
L. 1974.

43-727. Legislative council—establish guidelines. Each legislative intern is subject to guidelines established by the legislative council.

History: En. 43-727 by Sec. 8, Ch. 305,
L. 1974.

43-728. Interns responsible to sponsor. Each legislative intern is directly responsible to his or her legislator.

History: En. 43-728 by Sec. 9, Ch. 305,
L. 1974.

43-729. Program not mandatory. An institution of higher learning may choose not to participate in the legislative intern program.

History: En. 43-729 by Sec. 10, Ch. 305,
L. 1974.

43-730. Funding not obligatory. The legislature shall not, under any condition, because of this act, be obligated to fund this internship program.

History: En. 43-730 by Sec. 12, Ch. 305, L. 1974.

43-731. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

History: En. 43-731 by Sec. 11, Ch. 305, L. 1974. **Amendments** The 1977 amendment substituted "or" after "suspension" for "of"; and made minor changes in phraseology and punctuation. Approved March 25, 1974.

Effective Date

Section 13 of Ch. 305, Laws 1974 pro-

CHAPTER 8—LOBBYING

Section 43-801. Purposes of act.

43-803. Licensing of lobbyists.

43-806. Practice without license and registration prohibited—copies of statements, briefs, etc.—applicability of restrictions.

43-801. Purposes of act. The purposes of this act are to promote a high standard of ethics in the practice of lobbying, to prevent unfair and unethical lobbying practices, and to provide for the licensing of lobbyists and the suspension or revocation of the licenses.

History: En. Sec. 1, Ch. 157, L. 1959; amd. Sec. 19, Ch. 309, L. 1977.

Amendments

The 1977 amendment substituted "or" after "suspension" for "of"; and made minor changes in phraseology and punctuation.

43-803. Licensing of lobbyists. (1) Licenses—fees—eligibility. Any adult of good moral character who is a citizen of the United States and who is otherwise qualified under this act may be licensed as a lobbyist. The secretary of state shall provide a license application form. The application form may be obtained in the office of the secretary of state and filed therein. Upon approval of the application by the secretary of state and payment of the license fee of \$10 to the secretary of state, a license shall be issued which entitles the licensee to practice lobbying on behalf of one or more principals. Each license shall expire on December 31 of each odd-numbered year. No application may be disapproved without affording the applicant a hearing. The hearing shall be held and the decision entered within 10 days of the date of the filing of the application. The license fees collected by the secretary of state under this act shall be deposited by him in the state treasury.

(2) Suspension or revocation of license. Upon a verified complaint in writing to the attorney general charging the holder of a license with unprofessional conduct or with having procured his license by fraud or perjury or through error, the attorney general may bring a civil action in the district court for Lewis and Clark County against the holder and in the name of the state as plaintiff to revoke or suspend the license.

Hearing shall be held by the court unless the defendant-licensee demands a jury trial. The trial shall be held as soon as possible and at least 20 days after the filing of the charges and shall take precedence over all other matters pending before the court. If the court finds for the plaintiff, judgment shall be rendered revoking or suspending the license and the clerk of the court shall file a certified copy of the judgment with the secretary of state. The secretary of state may commence such an action on his own motion.

(3) Suspension of lobbying privileges. No lobbyist whose license has been suspended or revoked and no person who has been convicted of a violation of any provision of this act may engage in lobbying until he has been reinstated to the practice of lobbying and duly licensed.

History: En. Sec. 3, Ch. 157, L. 1959; amd. Sec. 3, Ch. 248, L. 1965; amd. Sec. 20, Ch. 309, L. 1977.

Amendments

The 1965 amendment deleted "in a special fund to be known as the 'Lobby License Fund' which fund is to be expended in the manner hereinafter provided" at the end of subsection (1); and deleted from subsection (2) a former fifth sentence which read: "Costs shall be paid from the 'Lobby License Fund'."

The 1977 amendment inserted "by the secretary of state" in the fourth sentence of subsection (1); inserted "or suspend" near the end of the first sentence of subsection (2); inserted "or suspending" in the fourth sentence of subsection (2); substituted "secretary of state" in the last sentence of subsection (2) for "licensing authority"; and made minor changes in phraseology, punctuation and style.

43-806. Practice without license and registration prohibited—copies of statements, briefs, etc.—applicability of restrictions. (1) No person may practice as a lobbyist unless he has been licensed under 43-803 and unless he is listed on the docket as employed in respect to such matters as he is promoting or opposing. No principal may directly or indirectly authorize or permit any lobbyist employed by him to practice lobbying in respect to any legislation affecting the pecuniary interest of the principal until the lobbyist is duly licensed and the name of the lobbyist is duly entered on the docket. No person may be employed as a lobbyist for a compensation dependent in any manner upon the passage or defeat of any proposed or pending legislation or upon any other contingency connected with the action of the legislature, of either branch thereof, or of any committee thereof.

(2) Before or within 5 days after a lobbyist delivers any written or printed statement, argument, or brief to the entire membership of either or both houses of the legislature, he shall deposit three copies with the secretary of state.

(3) The restrictions on the practice of lobbying provided by this act are effective only during the regular and special sessions of the legislature.

History: En. Sec. 6, Ch. 157, L. 1959; amd. Sec. 21, Ch. 309, L. 1977.

Amendments

The 1977 amendment made minor changes in phraseology, punctuation and style.

CHAPTER 9—LEGISLATIVE PROCEEDINGS—DISSEMINATION

- Section 43-901. Definitions.
 43-902. Schedule of fees for proceedings.
 43-903. Exclusions.
 43-904. Exemptions—public officials.

43-901. Definitions. For the purposes of this act, the following definitions are adopted.

1. "Person" shall include any person, firm, corporation or association.
2. "Proceedings of the legislature" shall include status sheets, daily journal, reproduced bills, reproduced resolutions, reproduced memorials, printed bills, printed resolutions and printed memorials and amendments thereto.
3. "One complete set" is one copy of each item of the proceedings of a session, regular or special, of the legislature.

History: En. Sec. 1, Ch. 223, L. 1959; amd. Sec. 1, Ch. 12, L. 1973; amd. Sec. 1, Ch. 292, L. 1974.

The 1974 amendment inserted "a session, regular or special, of" in subdivision 3.

Amendments

The 1973 amendment substituted "daily journal" in subdivision 2 for "status of proceedings"; substituted "reproduced" for "mimeographed" in three places in subdivision 2; and made a minor change in style.

Effective Date

Section 2 of Ch. 12, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved January 30, 1973.

43-902. Schedule of fees for proceedings. (1) A person desiring to receive one complete set of the proceedings of a regular session of the legislature shall pay to the secretary of state the amount prescribed in the joint legislative rules. Upon receipt of the money, the secretary of state shall transmit the name of the person to the executive director of the legislative council, who shall supply the person with a complete set of the proceedings. Any person desiring to receive more than one set shall pay the session fee for each additional set.

(2) A person who requests that a set of the proceedings be mailed shall pay an additional fee as prescribed in the joint legislative rules to the secretary of state for each complete set that is mailed.

(3) A person desiring to receive single copies of mimeographed bills, mimeographed resolutions, printed bills, printed resolutions, or amendments thereto shall purchase them from the legislative services division of the legislative council for a price varying with the length of the document as prescribed in the joint rules.

(4) A person desiring to receive single copies of status sheets or status of proceedings may purchase them from the legislative services division of the legislative council for a price per copy as prescribed in the joint rules. A person may subscribe to receive daily copies of the status sheets or status of proceedings by mail for a fee covering the actual costs of the service which the legislative council may fix.

(5) The executive director of the legislative council and the secretary of state shall account for all funds collected by their respective offices

under this section and shall transmit such funds to the treasurer of the state of Montana, who shall credit them to the general fund.

History: En. Sec. 2, Ch. 223, L. 1959; amd. Sec. 1, Ch. 14, L. 1967; amd. Sec. 1, Ch. 5, L. 1969; amd. Sec. 2, Ch. 292, L. 1974; amd. Sec. 22, Ch. 309, L. 1977.

Amendments

The 1967 amendment added a new subsection (b) and designated former subsections (b) through (e) as present subsections (c) through (f).

The 1969 amendment, in subsection (b), substituted "seventy-five dollars (\$75)" for "fifty dollars (\$50)," "ordinary" for "first class" before "mail," and "one hundred dollars (\$100)" for "eighty dollars (\$80)"; and, in subsection (c), deleted references to "mimeographed memorials" and "printed memorials."

The 1974 amendment inserted "a regular session of the" in the first sentence of subsection (a) after "proceedings of"; substituted "the amount prescribed in the joint legislative rules" at the end of the first sentence of subsection (a) for "one hundred dollars (\$100.00)"; substituted "executive director of the legislative council" in the second sentence of subsection (a) for "clerk of the house of representatives and the secretary of the senate"; substituted "the session fee" in the third sentence of subsection (a) for "one hundred dollars (\$100.00)"; substituted "purchase them from * * * in the joint rules" at the end of subsection (c) for "pay to the clerk of the house of representatives or the secretary of the senate twenty-five cents (\$.25) per single copy"; rewrote subsection (d) which read "Any person desiring to receive single copies of status sheets or status of proceedings shall first pay to the clerk of the house of representatives or the secretary of the senate ten cents (10¢) per single copy"; deleted former subsection (e) which read "The chief clerk of

the house of representatives and the secretary of the senate shall be responsible for accounting for all moneys received by them and shall transmit such funds received to the secretary of state before 5 p.m. each weekday. Any moneys received by them during Saturday, Sunday or evening sessions of the legislative assembly shall be held by them in a safe place and transmitted to the secretary of state upon the next business day"; redesignated former subsection (f) as (e); substituted "executive director of the legislative council" in subsection (e) for "secretary of state"; and substituted "section" in subsection (e) for "act."

The 1977 amendment redesignated former subsections (a) to (e) as subsections (1) to (5); deleted "In addition to the fee for each complete set of the proceedings specified by subsection (a) of this section" at the beginning of subsection (2); inserted "as prescribed in the joint legislative rules" in subsection (2); deleted "of seventy-five dollars (\$75) if a person requests that the proceedings be mailed ordinary mail and one hundred dollars (\$100) if a person requests that the proceedings be mailed air mail" in subsection (2); inserted "and the secretary of state" in subsection (5); inserted "by their respective offices" in subsection (5); and made minor changes in phraseology and punctuation.

Effective Dates

Section 2 of Ch. 14, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 2, 1967.

Section 2 of Ch. 5, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved January 29, 1969.

43-903. Exclusions. Representatives of general circulation newspapers, radio, and television who shall have first registered with the secretary of state shall be exempt from the provisions of section 43-902 and shall receive one complete set of the proceedings of the legislature without charge.

History: En. Sec. 3, Ch. 223, L. 1959; amd. Sec. 3, Ch. 292, L. 1974.

Amendments

The 1974 amendment substituted "general circulation newspapers" for "the press."

43-904. Exemptions—public officials. All elected state officials, state department heads, the state law library, and county clerks and recorders shall be exempted from the provisions of section 43-902.

History: En. Sec. 4, Ch. 223, L. 1959; amd. Sec. 4, Ch. 292, L. 1974.

Amendments

The 1974 amendment inserted "the state law library."

CHAPTER 10—FISCAL NOTES IN LEGISLATIVE BILLS

- Section 43-1001. Committee reports to include fiscal notes—need determined on introduction of bill.
- 43-1002. Budget director to prepare note.
- 43-1003. Note referred to committee—distribution to legislators on report of bill.
- 43-1004. Contents of fiscal notes.
- 43-1005. Note requested by committee or house.
- 43-1006. Background information available to legislators.

43-1001. Committee reports to include fiscal notes—need determined on introduction of bill. All bills reported out of a committee of the legislative assembly having an effect on the revenues, expenditures or fiscal liability of the state, except appropriation measures carrying specific dollar amounts, shall include a fiscal note incorporating an estimate of such effect. Fiscal notes shall be requested by the presiding officer of either house, who shall determine the need for the note at the time of introduction.

History: En. Sec. 1, Ch. 53, L. 1965.

Title of Act

An act requiring the inclusion of a fiscal

note in all bills having an effect on the revenues, expenditures or fiscal liability of the state.

43-1002. Budget director to prepare note. The budget director, in co-operation with the agency or agencies affected by the bill, is responsible for the preparation of the fiscal note and shall return same within six (6) days. The director may request additional time to complete a note, which extension must be submitted to the presiding officer or committee requesting the note for approval.

History: En. Sec. 2, Ch. 53, L. 1965; amd. Sec. 1, Ch. 6, L. 1974; amd. Sec. 97, Ch. 326, L. 1974; amd. Sec. 1, Ch. 321, L. 1975.

The same substitution was made in these sections by Secs. 1-3, Ch. 321, Laws 1975.

Compiler's Notes

Section 1, Ch. 229, Laws 1977 read: "There is a new section that reads as follows: Name change. Wherever the words 'department of administration' appear in 43-1002, 43-1003, and 43-1006 pursuant to 82A-217, the words 'budget director' are substituted."

Amendments

Chapter 6, Laws of 1974, added the second sentence.

Chapter 326, Laws of 1974, substituted "department of administration" for "state budget director."

The 1975 amendment substituted "budget director" and "director" for "department of administration" and "department."

43-1003. Note referred to committee—distribution to legislators on report of bill. A completed fiscal note shall be submitted by the budget director to the presiding officer who requested it, who shall refer it to the committee considering the bill. If the bill is printed, the note shall be reproduced and placed on the members' desks.

History: En. Sec. 3, Ch. 53, L. 1965; amd. Sec. 97, Ch. 326, L. 1974; amd. Sec. 2, Ch. 321, L. 1975.

Amendments

The 1974 amendment substituted "de-

partment of administration" in this section for "budget director."

The 1975 amendment substituted "budget director" for "department of administration"; and substituted "reproduced" for "mimeographed."

43-1004. Contents of fiscal notes. Fiscal notes shall, where possible, show in dollar amounts the estimated increase or decrease in revenues or expenditures, costs which may be absorbed without additional funds, and long-range financial implications. No comment or opinion relative to merits of the bill shall be included; however, technical or mechanical defects may be noted.

History: En. Sec. 4, Ch. 53, L. 1965.

43-1005. Note requested by committee or house. A fiscal note also may be requested on a bill, as the joint rules of the senate and the house of representatives may allow, by:

- (1) A committee considering the bill, or
- (2) A majority of the members of the house in which the bill is to be considered, at the time of second reading; or
- (3) The sponsor through the presiding officer.

History: En. Sec. 5, Ch. 53, L. 1965; amd. Sec. 1, Ch. 11, L. 1974.

Amendments

The 1974 amendment inserted "as the joint rules of the senate and the house of representatives may allow" in the preliminary paragraph; deleted "providing,

however, section 5 [this section] of this act shall not apply six (6) days before the close of transmittal of bills and/or shall not apply after the fifty-fourth day"; at the end of subdivision (2); added subdivision (3); and made a minor change in phraseology.

43-1006. Background information available to legislators. The budget director shall make available on request to any member of the legislature all background information used in developing a fiscal note.

History: En. Sec. 6, Ch. 53, L. 1965; amd. Sec. 97, Ch. 326, L. 1974; amd. Sec. 3, Ch. 321, L. 1975.

Amendments

The 1974 amendment substituted "department of administration" in this section for "budget director."

The 1975 amendment substituted "budg-

et director" for "department of administration"; and made a minor change in phraseology.

Effective Date

Section 4 of Ch. 321, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved April 8, 1975.

CHAPTER 11—LEGISLATIVE FINANCE ACT

- Section 43-1109. Title and purpose of act.
- 43-1110. Definitions.
- 43-1111. Legislative finance committee and office of legislative fiscal analyst.
- 43-1112. Appointment and term of members.
- 43-1113. Powers and duties of the committee.
- 43-1114. Legislative fiscal analyst's duties.
- 43-1115. Fiscal analysis information from state agencies.
- 43-1116. Appointment of fiscal analysis employees and consultants.
- 43-1117. Definitions.
- 43-1118. Approval of budget amendments.
- 43-1119. Legislative fiscal analyst to review budget amendments.

43-1101 to 43-1108. Repealed.

Repeal

Sections 43-1101 to 43-1108 (Secs. 1 to 8, Ch. 376, L. 1975), relating to the fiscal review committee, were repealed by Sec.

10, Ch. 448, Laws of 1975. Section 22, Ch. 439, Laws 1975 purported to amend sec. 43-1106.

43-1109. Title and purpose of act. This act may be cited as "The Legislative Finance Act." Because the legislature is responsible for appropriating public funds, it must provide for fiscal analysis of state government to accumulate, compile, analyze, and furnish such information bearing upon the financial matters of the state that is relevant to issues of policy and questions of state-wide importance.

History: En. 43-1109 by Sec. 1, Ch. 448, L. 1975.

Title of Act

An act to provide for fiscal review of state government; creating a legislative

finance committee and specifying its powers and duties; creating the office of legislative fiscal analyst and specifying duties; repealing sections 43-1101 through 43-1108, R. C. M. 1947; and providing an effective date.

43-1110. Definitions. In this act:

(1) "State agency" means all offices, departments, boards, commissions, institutions, universities, colleges, and any other person or any other administrative unit of state government that spends or encumbers public moneys by virtue of an appropriation from the legislature, or that handles money on behalf of the state, or that holds any trust or agency moneys from any source.

(2) "Committee" means the legislative finance committee created by this act.

(3) "Budget director" means the budget director appointed pursuant to section 79-1012, R. C. M. 1947.

History: En. 43-1110 by Sec. 2, Ch. 448, L. 1975.

43-1111. Legislative finance committee and office of legislative fiscal analyst. There is a legislative finance committee which is a permanent joint committee of the legislature. There is an office of legislative fiscal analyst. The legislative fiscal analyst shall carry out the provisions of this act.

History: En. 43-1111 by Sec. 3, Ch. 448, L. 1975; amd. Sec. 23, Ch. 309, L. 1977.

Amendments

The 1977 amendment substituted "shall carry out" in the last sentence for "shall direct the office in carrying out"; and made minor changes in phraseology.

43-1112. Appointment and term of members. (1) The legislative finance committee consists of:

(a) four members of the senate finance and claims committee appointed by the chairman;

(b) two members of the senate appointed at-large by the committee on committees;

(c) four members of the house of representatives appropriation committee appointed by the chairman; and

(d) two members of the house appointed at-large by the speaker.

(2) These members shall be appointed before the end of each legislative session. No more than three members of each house, two committee members and one at-large member, may be from the same political party.

(3) If a vacancy occurs on the committee when the legislature is not in session, the remaining members shall select a member of the appropriate political party and appropriate committee, as provided in this section, to complete the unexpired term.

(4) Appointments are for 2 years, and a member of the committee shall serve until his term of office as a legislator ends or until his successor is appointed, whichever occurs first.

(5) The committee shall elect one of its members as chairman and such other officers as it considers necessary.

(6) Members of the committee are entitled to receive compensation and expenses as provided in 43-310.1.

History: En. 43-1112 by Sec. 4, Ch. 448, L. 1975; amd. Sec. 5, Ch. 103, L. 1977.

Amendments

The 1977 amendment inserted the subsection designations; substituted "each legislative session" for "the first regular session of the biennium" at the end of

the first sentence of subsection (2); substituted "are entitled to receive compensation and expenses as provided in 43-310.1" for "shall be reimbursed for expenses and paid compensation as provided by law for interim standing committees" in subsection (6); and made minor changes in phraseology, punctuation and style.

43-1113. Powers and duties of the committee. The committee may: (1) Organize, adopt rules to govern its proceedings, and meet as often as necessary, upon the call of the chairman, to advise and consult with the legislative fiscal analyst;

(2) Employ the legislative fiscal analyst who shall serve at the pleasure of and be responsible to the committee, and the committee shall set his salary;

(3) Exercise the investigatory powers of a standing committee under Title 43, chapter 4, R. C. M. 1947.

History: En. 43-1113 by Sec. 5, Ch. 448, L. 1975.

43-1114. Legislative fiscal analyst's duties. The legislative fiscal analyst shall: (1) provide for fiscal analysis of state government and accumulate, compile, analyze, and furnish such information bearing upon the financial matters of the state that is relevant to issues of policy and questions of statewide importance, including, but not limited to, investigation and study of the possibilities of effecting economy and efficiency in state government;

(2) Estimate revenue from existing and proposed taxes;

(3) Analyze the executive budget and budget requests of selected state agencies and institutions, including proposals for the construction of capital improvements;

(4) Make the reports and recommendations he deems desirable to the legislature and make reports and recommendations as requested by the legislative finance committee and the legislature; and

(5) Assist committees of the legislature, and individual legislators, in compiling and analyzing financial information.

History: En. 43-1114 by Sec. 6, Ch. 448, L. 1975.

Constitutionality

Sections 43-1114 and 43-1115 do not impose unconstitutional burden upon state government, since power to approve ap-

propriation bills and budget is in legislative branch, and committee may require such information from other branches as is reasonably necessary to form rational basis for budget determinations. State ex rel. Judge v. Legislative Finance Committee, — M —, 543 P 2d 1317.

43-1115. Fiscal analysis information from state agencies. The legislative fiscal analyst has the authority to investigate and examine into the costs of state government activities and may examine the records, books, and files of any state agency, including confidential records of executive branch agencies. Every state agency shall furnish the legislative fiscal analyst with copies of all budget requests, at the time of submission to the budget director as provided by law, and if requested, all underlying and supporting documentation. In the year preceding each legislative session, the budget director shall furnish the legislative fiscal analyst on a confidential basis:

(1) by December 1, a copy of the documents which reflect the anticipated receipts and other means of financing the budget for each fiscal year of the ensuing biennium;

(2) by December 1, a preliminary budget which shall meet the statutory requirements for submission of the budget to the legislature; and

(3) by December 15, all amendments to the preliminary budget.

History: En. 43-1115 by Sec. 7, Ch. 448, L. 1975.

Constitutionality

Sections 43-1114 and 43-1115 do not impose unconstitutional burden upon state government, since power to approve ap-

propriation bills and budget is in legislative branch, and committee may require such information from other branches as is reasonably necessary to form rational basis for budget determinations. State ex rel. Judge v. Legislative Finance Committee, — M —, 543 P 2d 1317.

43-1116. Appointment of fiscal analysis employees and consultants. The legislative fiscal analyst may employ, fix the salaries and define the duties of such staff and consultants as may be necessary, within the limits of his appropriation.

History: En. 43-1116 by Sec. 8, Ch. 448, L. 1975.

Compiler's Notes

Section 9 of Ch. 448, Laws 1975 read "Any unexpended funds appropriated by House Bill No. 1128, Session Laws of 1974, and funds appropriated to the 'Fiscal Analysis Program' in House Bill No. 286, Session Laws of 1975, are hereby transferred to the office of the legislative fiscal analyst to carry out the purposes of this act."

Repealing Clause

Section 10 of Ch. 448, Laws 1975 read "Sections 43-1101 through 43-1108, R. C. M. 1947, are repealed."

Effective Date

Section 11 of Ch. 448, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved April 16, 1975.

43-1117. Definitions. In this act:

(1) The definitions contained in the Legislative Finance Act shall apply.

(2) "Budget amendment" means a request submitted through the budget director to the committee for executive branch agencies to expend funds in excess of those appropriated by the legislature.

History: En. 43-1117 by Sec. 1, Ch. 510, L. 1975.

Title of Act

An act granting the legislative finance committee review and approval power over budget amendments.

43-1118. Approval of budget amendments. All budget amendments for state agencies must be submitted through the budget director to the committee. No state agency shall expend in excess of the appropriation except under authority of a budget amendment.

History: En. 43-1118 by Sec. 2, Ch. 510, L. 1975; amd. Sec. 24, Ch. 309, L. 1977.

Constitutionality

Empowering finance committee to approve budget amendments is an unconstitutional delegation of legislative power, since this power is properly exercisable only by either entire legislature or executive officer or agency, not by interim committee. State ex rel. Judge v. Legislative Finance Committee, — M —, 543 P 2d 1317.

Amendments

The 1977 amendment deleted "approved by the committee" at the end of the second sentence; and deleted the former last sentence which read "The committee shall approve, with or without modification, or disapprove, each proposed budget amendment of any state agency."

43-1119. Legislative fiscal analyst to review budget amendments. The legislative fiscal analyst shall review proposed budget amendments submitted to the committee from the budget director and make recommendations to the committee concerning proposed budget amendments.

History: En. 43-1119 by Sec. 3, Ch. 510, L. 1975.

TITLE 44—LIBRARIES

- Chapter
1. The state library of Montana, 44-126.1 to 44-128, 44-131 to 44-139.
 2. Library systems, 44-212 to 44-215, 44-218 to 44-231.
 3. State grant programs, 44-304 to 44-308.
 4. State law library, 44-402, 44-403, 44-405, 44-411.
 5. Historical society—library and museum, 44-515.1 to 44-521, 44-523 to 44-528.
 6. Interstate library compact, 44-601, 44-602.

CHAPTER 1—THE STATE LIBRARY OF MONTANA

- Section
- 44-126.1. State library authorized.
 - 44-127. State library commission created.
 - 44-128. Librarian and assistants.
 - 44-131. Powers of state library commission.
 - 44-132. Definitions.
 - 44-133. Creation of distribution center—state library commission to make regulations.
 - 44-134. Depositing of state agency publications—additional copies—inter-library loan—sale publications.
 - 44-135. Depository contracts—eligibility requirements—standards.
 - 44-136. List of available publications.
 - 44-137. State agency lists of current publications.
 - 44-138. Restriction on general public distribution.
 - 44-139. Exemptions.

44-126.1. State library authorized. The state library commission shall maintain and operate a state library to be located in Helena.

History: En. 44-126.1 by Sec. 1, Ch. 3, L. 1977.

Title of Act

An act to generally revise and clarify the laws relating to libraries, arts, and

antiquities; enacting three new sections; amending sections 44-139, 44-219.2, 44-517, 44-518, 44-520, 81-2508, 81-2510, 82-3607, and 82A-218, R. C. M. 1947; and repealing sections 44-522, 44-529, 78-302, 82-3205, and 82-3206, R. C. M. 1947.

44-127. (1575.1) State library commission created. A commission is hereby created to be known as the state library commission. This commission shall consist of the librarian of the state university, the state superintendent of public instruction, ex officio member, and the three members to be appointed by the governor, who shall serve one, two and three years respectively. As these terms expire, annually thereafter one person shall be appointed, for a term of three years. The commission shall annually elect a chairman from its membership. The members of said commission shall receive no compensation for their services except their travel expenses, as provided for in sections 59-538, 59-539, and 59-801.

History: En. Sec. 1, Ch. 184, L. 1929; amd. Sec. 1, Ch. 91, L. 1945; amd. Sec. 1; Ch. 55, L. 1961; amd. Sec. 1, Ch. 215, L. 1965; amd. Sec. 23, Ch. 439, L. 1975.

Amendments

The 1965 amendment deleted "as chairman" after "librarian of the state university" in the second sentence; and inserted the fourth sentence.

The 1975 amendment substituted "travel expenses, as provided for in sections 59-538, 59-539, and 59-801" for "actual and necessary expenses" at the end of the section.

Cross-References

Commission continued in department of education, sec. 82A-509.

44-128. (1575.2) Librarian and assistants. The commission shall employ as its executive officer a librarian, who is a graduate of an accredited library school and is not a member of the commission, for such compensation as the commission considers adequate. The executive officer shall perform the duties assigned by the commission and serve at the will of the commission. The commission may also employ such other assistants as are required for the performance of the commission's work. In addition to their salaries, while on commission business the librarian and assistants shall be allowed their travel expenses, as provided for in 59-538, 59-539, and 59-801, as amended.

History: En. Sec. 2, Ch. 184, L. 1929; amd. Sec. 2, Ch. 91, L. 1945; amd. Sec. 2, Ch. 55, L. 1961; amd. Sec. 7, Ch. 453, L. 1977.

Amendments

The 1977 amendment inserted "while on commission business" near the be-

ginning of the last sentence; substituted "travel expenses, as provided for in 59-538, 59-539, and 59-801, as amended" at the end of the last sentence for "mileage and per diem while absent from the commission office in the service of the commission"; and made minor changes in phraseology and punctuation.

44-129, 44-130. (1575.3, 1575.4) Repealed.

Repeal

These sections (Secs. 3, 4, Ch. 91, L. 1945; Sec. 3, Ch. 55, L. 1961), relating to

powers and duties of the state library commission, were repealed by Sec. 3, Ch. 215, Laws 1965.

44-131. Powers of state library commission. The state library commission shall have the power: (1) To give assistance and advice to all tax-supported or public libraries in the state and to all counties, cities, towns or regions in the state which may propose to establish libraries, as to the best means of establishing and improving such libraries;

(2) To maintain and operate the state library and make provision for its housing;

(3) To accept and to expend in accordance with the terms thereof any grant of federal funds which may become available to the state for library purposes;

(4) To make rules and regulations and establish standards for the administration of the state library, and for the control, distribution and lending of books and materials;

(5) To serve as the agency of the state to accept and administer any state, federal or private funds or property appropriated for or granted to it for library service or to foster libraries in the state and to establish regulations under which funds shall be dispersed;

(6) To provide library services for the blind and physically handicapped;

(7) To furnish, by contract or otherwise, library assistance and information services to state officials, state departments and residents of those parts of the state inadequately serviced by libraries;

(8) To act as a state board of professional standards and library examiners and develop standards for public libraries and adopt rules and regulations for the certification of librarians;

(9) To designate areas for the establishment of federations of libraries

and to designate the headquarters library for such federations. The librarian of the headquarters library shall serve as the co-ordinator of the federation and as a nonvoting member of the federation advisory board of trustees. It is the policy of the legislature to encourage the most efficient delivery of library services to the people of Montana. To that end the state should be divided into regions within which libraries desiring to participate in the distribution of such state funding to libraries as may be available from time to time shall organize into library federations to pool resources and information and avoid duplication of effort.

History: En. Sec. 2, Ch. 215, L. 1965;
amd. Sec. 1, Ch. 357, L. 1974.

Title of Act

An act amending section 44-127, R. C. M. 1947, defining the powers and duties of the state library commission; and repealing sections 44-129 and 44-130, R. C. M. 1947.

Amendments

The 1974 amendment added "and physically handicapped" at the end of subdivision (6); added subdivision (9); and made a minor change in punctuation.

Repealing Clause

Section 3 of Ch. 215, Laws 1965 read "Sections 44-129 and 44-130, R. C. M. 1947, are repealed."

44-132. Definitions. As used in this act:

(1) "Print" includes all forms of printing and duplicating, regardless of format or purpose, with the exception of correspondence and interoffice memoranda.

(2) "State publication" includes any document, compilation, journal, law, resolution, bluebook, statute, code, register, pamphlet, list, book, proceedings, report, memorandum, hearing, legislative bill, leaflet, order, regulation, directory, periodical or magazine issued in print, or purchased for distribution, by the state, the legislature, constitutional officers, any state department, committee or other state agency supported wholly or in part by state funds.

(3) "State agency" includes every state office, officer, department, division, bureau, board, commission and agency of the state, and, where applicable, all subdivisions of each.

History: En. Sec. 1, Ch. 261, L. 1967.

Title of Act

An act to create a state publications library distribution center as a division

of the state library and amending section 82-1916, R. C. M. 1947, relating to printing and distribution of state reports and providing for reimbursement for additional publications.

44-133. Creation of distribution center—state library commission to make regulations. There is hereby created as a division of the state library, and under the direction of the state librarian, a state publications library distribution center. The center shall promote the establishment of an orderly depository library system. To this end the state library commission shall make such rules and regulations necessary to carry out the provisions of this act.

History: En. Sec. 2, Ch. 261, L. 1967.

44-134. Depositing of state agency publications—additional copies—inter-library loan—sale publications. Every state agency shall upon release deposit at least four copies of each of its state publications with the

state library for record and depository purposes. Additional copies shall also be deposited, in quantities certified to the agencies by the state library as required to meet the needs of the depository library system and to provide inter-library loan service to those libraries without depository status. Additional copies of sale publications required by the state library shall be furnished only upon reimbursement to the state agency of the full cost of such sale publications, and the state library shall also reimburse any state agency for additional publications so required, where the quantity desired will necessitate additional printing or other expense to such agency.

History: En. Sec. 3, Ch. 261, L. 1967.

Cross-Reference

Printing and publications of state agencies and offices, sec. 82-1916.

44-135. Depository contracts — eligibility requirements — standards. The center shall enter into depository contracts with any municipal or county free library, state college or state university library, the library of congress and the midwest inter-library center, and other state libraries. The requirements for eligibility to contract as a depository library shall be established by the state library commission upon recommendations of the state librarian. The standards shall include and take into consideration the type of library, ability to preserve such publications and to make them available for public use, and also such geographical locations as will make the publications conveniently accessible to residents in all areas of the state.

History: En. Sec. 4, Ch. 261, L. 1967.

44-136. List of available publications. The center shall publish and distribute regularly to contracting depository libraries and other libraries upon request a list of available state publications.

History: En. Sec. 5, Ch. 261, L. 1967.

44-137. State agency lists of current publications. Upon request by the center, issuing state agencies shall furnish the center with a complete list of its current state publications and a copy of its mailing and/or exchange lists.

History: En. Sec. 6, Ch. 261, L. 1967.

44-138. Restriction on general public distribution. The center shall not engage in general public distribution of either state publications or lists of publications.

History: En. Sec. 7, Ch. 261, L. 1967.

44-139. Exemptions. This act shall not apply to officers of or affect the duties concerning publications distributed by:

- (1) the state law library;
- (2) the secretary of state in connection with his duties under 82-2202 (16), as amended;

(3) the code commissioner in connection with his duties under Title 12, chapter 5, as amended; and

(4) the legislative service division of the legislative council in connection with its duties under 43-711.2, as amended.

History: En. Sec. 8, Ch. 261, L. 1967; 2202 (16), as amended" in subdivision amd. Sec. 2, Ch. 3, L. 1977. (2) for "sections 12-317, 82-2202 (17) and 43-711.2, R. C. M. 1947"; added subdivisions (3) and (4); and made minor

Amendments

The 1977 amendment substituted "82- changes in phraseology and style.

CHAPTER 2—LIBRARY SYSTEMS

- Section 44-212. Library systems defined—establishment.
 44-213. Participation of other governmental units.
 44-214. Board of trustees—appointment.
 44-214.1. Boards of trustees—powers.
 44-215. Appropriations for support of library federations.
 44-218. Purpose of act in regard to free public libraries.
 44-219. Establishing public library—resolution—petition—election.
 44-219.1. Joint city-county library—expenses.
 44-219.2. City-county library—board of trustees.
 44-220. Levying of tax—special library fund—payments upon order or warrant.
 44-221. Board of trustees—appointment—composition of board—tenure.
 44-222. Board of trustees—powers and duties.
 44-223. Board of trustees—chief librarian—personnel—compensation.
 44-224. Free use of library—exclusions—extending privileges.
 44-225. Providing library services—co-operation and merging of boards, institutions and agencies.
 44-226. Cities or towns with existing tax-supported libraries—notification—exemption from county taxes.
 44-227. "City" defined.
 44-228. Continued existence of all public libraries.
 44-229. Library depreciation reserve fund authorized.
 44-230. Moneys for library depreciation reserve fund.
 44-231. Investment of fund.

44-201 to 44-210. (4563 to 4572) Repealed.

Repeal

These sections (Secs. 1 to 10, Ch. 45, L. 1915; Secs. 1 to 4, Ch. 137, L. 1917; Sec. 1, Ch. 56, L. 1923; Secs. 1 to 3, Ch. 202, L. 1943; Sec. 1, Ch. 14, L. 1949), relating to county and regional free libraries were repealed by Sec. 12, Ch. 260, Laws 1967.

44-212. Library systems defined — establishment. Library systems shall include library federations, or library networks as defined hereafter:

(1) Library federations. A library federation is a combination of libraries serving a multi-county, multi-city, or city-county area within a federation area designated by the state library commission. Any other public library or town, city, or county within the federation area may participate in such a federation. Two (2) or more cities, towns, counties, or a city and one or more counties may agree by contract to form such a federation by action of their respective governing bodies or duly created boards of library trustees, provided that one of the parties is or maintains a library which has been designated by the state library commission as a headquarters library for that federation area. The participating entities may retain such autonomy over their respective libraries as may be speci-

fied in the contract. The expense of providing library services for the library federation shall be apportioned between or among the towns, cities and counties involved on such basis as shall be agreed upon in the contract. The treasurer of one of the participating units, as shall be provided in the contract shall have the custody of the funds of the federation, and the participating governments concerned shall transfer semi-annually to him all moneys collected for the "free library fund" in their respective jurisdiction. A participating entity may withdraw from a federation according to the terms for withdrawal provided in the contract by the action of its governing body or by a majority of its qualified voters voting at a general or special election.

(2) Library networks. A library network is an agreement between individual libraries or library systems, which may be inter-city, intra-state, or inter-state, for the exchange of information or to provide specific library services not provided in existing library federations.

History: En. Sec. 1, Ch. 132, L. 1939;
amd. Sec. 2, Ch. 357, L. 1974.

Amendments

The 1974 amendment completely rewrote this section. For version prior to amendment, see parent volume.

44-213. Participation of other governmental units. When a library federation shall have been established, the legislative body of any government unit in the designated library federation area may decide, with the concurrence of the board of trustees of its library, if it is maintaining a library, to participate in the library federation. Each local entity may determine the amount of services it wishes to supply to fulfill the needs of its unit. After the necessary contract has been executed and beginning with the next fiscal year, the said governmental unit shall participate in the library federation and its residents shall be entitled to the benefits of the library federation, and property within its boundaries shall be subject to taxation for library federation purposes.

The state board of regents may contract with the government of any city or county, or the governments of both the city and the county, in which a unit of the university of Montana is located for the establishment and operation of joint library services. Any such contract which proposes the erection of a building shall be subject to the approval of the legislature. Any joint library services established pursuant to this section shall be operated and supported as provided in such contract and under this chapter.

History: En. Sec. 2, Ch. 132, L. 1939;
amd. Sec. 1, Ch. 249, L. 1963; amd. Sec.
3, Ch. 357, L. 1974.

Amendments

The 1963 amendment added the third, fourth, and fifth sentences.

The 1974 amendment substituted "library federation" throughout the section for "joint county or regional library"; substituted "in the designated library federation area" in the first sentence for "therein that is maintaining a library"; inserted "if it is maintaining a library" in

the first sentence; inserted the second sentence; substituted "After the necessary contract has been executed and" at the beginning of the third sentence for "after which"; deleted "of the county" in the third sentence after "fiscal year"; deleted a sentence at the end of the first paragraph which read "A governmental unit participating in the joint county or regional library may retain title to its own property, continue its own board of library trustees, and may levy its own taxes for library purposes; or, by a majority vote of the qualified electors, a governmental

unit may transfer, conditionally or otherwise, the ownership and control of its library, with all or any part of its property, to another governmental unit which is providing or will provide free library service in the territory of the former, and the trustees or body making the transfer shall thereafter be relieved of responsibility pertaining to the property transferred"; substituted "regents" in the first sentence of the second paragraph for "education"; substituted "services" in two places in the second paragraph for "facili-

ties"; and made minor changes in phraseology.

Effective Date

Section 2 of Ch. 249, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 11, 1963.

Cross-References

Board of regents to exercise powers and duties of state board of education, sec. 75-5617 (2).

44-214. Board of trustees—appointment. In a library federation there shall be a board of trustees with advisory powers only, the operation of the library federation having been specified by contract. The board of trustees of each participating library shall name one of their members to the federation advisory board of trustees and each participating entity without a duly appointed library board shall name a layman to represent that entity on the library federation board of trustees.

History: En. Sec. 3, Ch. 132, L. 1939; amd. Sec. 10, Ch. 260, L. 1967; amd. Sec. 4, Ch. 357, L. 1974.

Amendments

The 1967 amendment added the last sentence.

The 1974 amendment completely rewrote this section. Prior to amendment it read "In a joint county or regional library district the board of five trustees shall be appointed by the joint action of all the county commissioners in the district. The first appointments or elections shall be for terms of one (1), two (2),

three (3), four (4), and five (5) years respectively, and thereafter a trustee shall be appointed or elected annually to serve for five (5) years. Vacancies shall be filled for unexpired terms as soon as possible in the manner in which members of the board are regularly chosen. A trustee shall not receive a salary or other compensation for services as trustee, but necessary expenses actually incurred shall be paid from the library fund. A library trustee may be removed only by vote of the legislative body. Trustees shall serve no more than two full terms in succession."

44-214.1. Boards of trustees—powers. The board of trustees of a library federation shall act as an adviser to the participating libraries and their boards of trustees. Any disagreement among participants in a library federation regarding the apportionment of funds or grants received from the state library commission shall be resolved by the state library commission. Control over the budgets and administrative policies of participating libraries shall remain in their boards of trustees as provided in section 44-222.

History: En. 44-214.1 by Sec. 5, Ch. 357, L. 1974.

Title of Act

An act defining and revising the pro-

cedures for establishing library systems; and amending sections 44-131, 44-212, 44-213, 44-214, and 44-215, R. C. M. 1947.

44-215. Appropriations for support of library federations. After a library federation shall have been established or library service contracted for, the legislative body of the governmental unit for which the library was established or the service engaged, shall appropriate money annually for the support of the library or library services and so far as possible,

the taxes levied and collected for this purpose shall be levied and collected within the territory to be served.

History: En. Sec. 4, Ch. 132, L. 1939; amd. Sec. 6, Ch. 357, L. 1974.

Amendments

The 1974 amendment substituted "library federation" in this section for "joint county or regional library"; inserted "or library services" after "support of the library"; and deleted from the end of the section two sentences reading "The board

of trustees shall have the exclusive control of expenditures from the fund subject to any examination of accounts required by the state and money shall be paid from the fund only upon vouchers of the board of trustees, without further audit. The board shall not make expenditures or incur indebtedness in any year in excess of the amount of money appropriated and available for library purposes."

44-216, 44-217. Repealed.

Repeal

These sections (Secs. 5, 6, Ch. 132, L. 1939), relating to tax levies and librarians

for joint county or regional libraries, were repealed by Sec. 12, Ch. 260, Laws 1967.

44-218. Purpose of act in regard to free public libraries. It is the purpose of this act to encourage the establishment, adequate financing, and effective administration of free public libraries in this state to give the people of Montana the fullest opportunity to enrich and inform themselves through reading.

History: En. Sec. 1, Ch. 260, L. 1967.

Title of Act

An act providing for the creation, maintenance and operation of public libraries in counties and cities and re-

pealing sections 44-201, 44-202, 44-203, 44-204, 44-205, 44-206, 44-207, 44-208, 44-209, 44-210, 44-216, 44-217, 44-301, 44-302, 44-303 and 11-704, R. C. M. 1947; amending section 44-214, R. C. M., 1947.

44-219. Establishing public library — resolution — petition — election. A public library may be established in any county or city in any of the following ways:

(1) The governing body of any county or city desiring to establish and maintain a public library may pass and enter upon its minutes a resolution to the effect that a free public library is established under the provision of Montana laws relating to public libraries.

(2) By petition signed by not less than ten per centum (10%) of the resident taxpayers whose names appear upon the last completed assessment roll of the city or county being filed with the governing body requesting the establishment of a public library. The governing body of a city or county shall set a time of meeting at which they may by resolution establish a public library; the governing body shall give notice of the contemplated action in a newspaper of general circulation for two consecutive weeks giving therein the date and place of the meeting at which the contemplated action is proposed to be taken.

(3) Upon a petition being filed with the governing body and signed by not less than five per centum (5%) of the resident taxpayers of any city or county requesting an election the governing body shall submit to a vote of the qualified electors thereof, at the next general election, the question of whether a free public library shall be established. If such a petition is submitted for a city or town, the petition must be signed by resident taxpayers of said city or town. If such a petition is

submitted to the county commissioners of a county asking for the establishment of a county library, the petition must be signed by resident taxpayers of the county who reside outside the corporate limits of an incorporated city or town located in said county which may already have established a free public library for such city or town.

If such petition specifically asks that a special election be called, and such petition is signed by thirty-five per centum (35%) of the resident freeholders affected by such petition, then the governing body shall, upon receipt of such petition, immediately set a date for a special election, which date shall be as soon as the procedures for establishing a special election will allow.

If at such election, a majority of the electors voting on the question vote in favor of the establishment of a library, the governing body shall immediately take the necessary steps to establish and maintain said library, or to contract with any city or county for library service to be rendered to the inhabitants of such city, town or county.

History: En. Sec. 2, Ch. 260, L. 1967;
amd. Sec. 1, Ch. 263, L. 1969.

Amendments

The 1969 amendment substituted "any" for "either" in the introductory sentence and added subdivision (3).

44-219.1. Joint city-county library—expenses. A county and any city or cities within the county, by action of their respective governing bodies, may join in establishing and maintaining a joint city-county library under the terms of a contract agreed upon by all parties. The expenses of a joint city-county library shall be apportioned between or among the county and cities on such a basis as shall be agreed upon in the contract. The governing body of any city or county entering into a contract may levy a special tax as provided in section 44-220 for the establishment and operation of a joint city-county library. The treasurer of the county, or of a participating city within the county, as shall be provided in the contract, shall have custody of the funds of the joint city-county library, and the other treasurers of the county or cities joining in the contract shall transfer quarterly to him all moneys collected for the joint city-county library. The contract shall provide for the disposition of property upon dissolution of the joint city-county library.

History: En. Sec. 1, Ch. 273, L. 1973.

Title of Act

An act to provide for the establishment and operation of a joint city-county library; and providing an effective date.

44-219.2. City-county library—board of trustees. (1) A joint city-county library shall be governed by a board of trustees composed of five members chosen as specified in the contract, with terms not to exceed 5 years.

(2) Trustees shall serve no more than two full terms in succession.

(3) Trustees shall serve without compensation, but their actual and necessary expenses incurred in the performance of their official duties may be paid from library funds.

(4) Trustees shall meet and elect a chairman and such other officers as they consider necessary for 1-year terms.

(5) The board of trustees shall have the same powers and duties as the board of trustees of a city library or a county library.

History: En. Sec. 2, Ch. 273, L. 1973; 225"; and made minor changes in phraseology and style.
amd. Sec. 3, Ch. 3, L. 1977.

Amendments
The 1977 amendment substituted "same powers and duties as the board of trustees of a city library or a county library" in subsection (5) for "power and duties as specified in sections 44-213 through 44-

Effective Date
Section 3 of Ch. 273, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 10, 1973.

44-220. Levying of tax—special library fund—payments upon order or warrant. The governing body of any city or county which has established a public library may levy in the same manner and at the same time as other taxes are levied a special tax not to exceed 3 mills on the dollar upon all property in such county, which may be levied by the governing body of such county, and not to exceed 4½ mills on the dollar upon all property in such city or town, which may be levied by the governing body of such city or town, in the amount necessary to maintain adequate public library service. The proceeds of such tax shall constitute a separate fund called the public library fund and shall not be used for any purpose except those of the public library. No money shall be paid out of the public library fund by the treasurer of the city or county except by order or warrant of the board of library trustees.

Bonds may be issued by the governing body in the manner prescribed by law for the erection and equipment of public library buildings and the purchase of land therefor.

History: En. Sec. 3, Ch. 260, L. 1967. complex and has implied power to allocate costs among various city departments using the facility. Greener v. City of Great Falls, 157 M 376, 485 P 2d 932.
Allocation of Costs
City has general budgetary authority in financing construction of city shop

44-221. Board of trustees — appointment — composition of board — tenure. Upon the establishment of a public library under the provisions of this act, the mayor, with the advice and consent of the city council or city commissioners, shall appoint a board of trustees for the city library and the chairman of the board of county commissioners, with the advice and consent of said board, shall appoint a board of trustees for the county library. The library board shall consist of five trustees. Not more than one member of the governing body shall be, at any one time, a member of such board. Trustees shall serve without compensation but their actual and necessary expenses incurred in the performance of their official duties may be paid from library funds. Trustees shall hold their office for five years from the date of appointment, and until their successors are appointed. Initially appointments shall be made for one, two, three, four and five year terms. Annually thereafter, there shall be appointed before the first day of July of each year in the same manner as the original appointments for a five year term, a trustee to take

the place of the retiring trustee. Trustees shall serve no more than two full terms in succession. Following such appointments in July of each year, the trustees shall meet and elect a chairman and such other officers as they deem necessary, for one year terms. Vacancies in the board of trustees shall be filled for the unexpired term in the same manner as original appointments.

History: En. Sec. 4, Ch. 260, L. 1967.

44-222. Board of trustees—powers and duties. The library board of trustees shall have exclusive control of the expenditure of the public library fund, of construction or lease of library buildings, and of the operation and care of the library. The library board of trustees of every public library shall:

(1) Adopt bylaws, rules and regulations for its own transaction of business and for the government of the library, not inconsistent with law.

(2) Establish and locate a central public library and may establish branches thereof at such places as are deemed necessary.

(3) Have the power to contract, including the right to contract with regions, counties, cities, school districts, educational institutions, the state library and other libraries to give and receive library service, through the boards of such regions, counties and cities and the district school boards, and to pay out or receive funds to pay costs of such contracts.

(4) Have the power to acquire by purchase, devise, lease or otherwise, and to own and hold real and personal property, in the name of the city or county or both as the case may be, for the use and purposes of the library, and to sell, exchange or otherwise dispose of property real or personal when no longer required by the library, and to insure the real and personal property of the library.

(5) Pay necessary expenses of members of the library staff when on business of the library.

(6) Prepare an annual budget indicating what support and maintenance of the public library will be required from public funds for submission to the appropriate agency of the governing body. A separate budget request shall be submitted for new construction or for capital improvement of existing library property.

(7) Make an annual report to the governing body of the city or county on the condition and operation of the library, including a financial statement. The trustees shall also provide for the keeping of such records as shall be required by the Montana State Library in its request for an annual report from the public libraries and shall submit such an annual report to the state library.

(8) Have the power to accept gifts, grants and donations from whatever source and to expend the same for the specific purpose of the gift, grant, or donation. These gifts, grants and donations shall be kept separate from regular library funds and are not subject to reversion at the end of the fiscal year.

(9) Exercise such other powers, not inconsistent with law, necessary for the effective use and management of the library.

History: En. Sec. 5, Ch. 260, L. 1967.

Allocation of Costs

City has general budgetary authority in financing construction of city shop

complex and has implied power to allocate costs among various city departments using the facility. *Greener v. City of Great Falls*, 157 M 376, 485 P 2d 932.

44-223. Board of trustees—chief librarian—personnel—compensation. The board of trustees of each library shall appoint and set the compensation of the chief librarian who shall serve as the secretary of the board and shall serve at the pleasure of the board. With the recommendation of the chief librarian the board shall employ and discharge such other persons as may be necessary in the administration of the affairs of the library, fix and pay their salaries and compensation and prescribe their duties.

History: En. Sec. 6, Ch. 260, L. 1967.

Status of Board

This section did not render the library board, rather than the city, the "public employer" of library personnel within meaning of the Collective Bargaining for

Public Employees Act, 59-1601 et seq.; rather, it qualified members of the board as "supervisory employees" within meaning of 59-1602(3). *Local 2390 of American Federation of State, County, Municipal Employees, A.F.L.-C.I.O. v. City of Billings*, — M —, 555 P 2d 507.

44-224. Free use of library—exclusions—extending privileges. Every library established under the provisions of this act shall be free to the use of the inhabitants of the city or the county supporting such library. The board may exclude from the use of the library any and all persons who shall willfully violate the rules of the library. The board may extend the privileges and use of the library to persons residing outside of the city or county upon such terms and conditions as it may prescribe by its regulations.

History: En. Sec. 7, Ch. 260, L. 1967.

44-225. Providing library services—co-operation and merging of boards, institutions and agencies. Library boards of trustees, boards of other educational institutions, library agencies, and local political subdivisions are hereby empowered to co-operate, merge or combine in providing library service.

History: En. Sec. 8, Ch. 260, L. 1967.

44-226. Cities or towns with existing tax-supported libraries—notification—exemption from county taxes. After the establishment of a county free library as provided in this act, the governing body of any city or town which has an existing tax-supported public library may notify the board of county commissioners that such city or town does not desire to be a part of the county library system. Such notification shall exempt the property in such city or town from liability for taxes for county library purposes.

History: En. Sec. 9, Ch. 260, L. 1967.

44-227. "City" defined. Wherever the word "city" is used in this act it means city or town.

History: En. Sec. 11, Ch. 260, L. 1967.

44-228. Continued existence of all public libraries. All public libraries heretofore established shall continue in existence, subject to the changes in administration provided herein.

History: En. Sec. 12, Ch. 260, L. 1967.

44-229. Library depreciation reserve fund authorized. The governing body of any city or county or a combination of city and county in Montana may establish a library depreciation reserve fund for the replacement and acquisition of property, capital improvements and equipment necessary to maintain and improve city, county, or city-county library services.

History: En. 44-229 by Sec. 1, Ch. 78, Title of Act
L. 1975.

An act to allow the creation of a library depreciation reserve fund by either city or county government or both of them.

44-230. Moneys for library depreciation reserve fund. Moneys for the library depreciation reserve fund are those funds which have been allocated to the library in any year but which have not been expended by the end of the year. Such moneys include, but are not limited to, city or county or city-county appropriations, federal revenue sharing funds, and public and private grants.

History: En. 44-230 by Sec. 2, Ch. 78,
L. 1975.

44-231. Investment of fund. The moneys held in the library depreciation reserve fund may be invested as provided by law. All interest earned on the fund must be credited to the library depreciation reserve fund.

History: En. 44-231 by Sec. 3, Ch. 78,
L. 1975.

CHAPTER 3—STATE GRANT PROGRAMS

- Section 44-304. Purpose.
44-305. Administration by Montana state library commission.
44-306. Definitions of grant programs.
44-307. Allocation of funds by grant program.
44-308. Formulae for distribution of grants.

44-301 to 44-303. (5049 to 5051) Repealed.

Repeal
These sections (Sec. 1, p. 110, L. 1883; Secs. 5039 to 5041, Pol. C. 1895; Sec. 1, p. 229, L. 1897; Sec. 1, Ch. 32, L. 1931; Sec. 1, Ch. 61, L. 1947), relating to the establishment of free public libraries, were repealed by Sec. 12, Ch. 260, Laws 1967.

44-304. Purpose. It is the purpose of this act to establish a program whereby state funds appropriated to the Montana state library commission may be allocated among three different grant programs. Such program of state funding is intended to provide the benefits of quality public li-

brary service to all residents of Montana by developing and strengthening local public libraries through library federations as defined in section 44-212.

History: En. 44-304 by Sec. 1, Ch. 416, L. 1975.

Title of Act

An act to provide for a popular vote on the question of state funding to public library federations with a one (1) mill levy on all taxable property; authorizing the state library commission to distribute grants to public library federations; defining grant programs; amending section 84-3804; R. C. M. 1947.

44-305. Administration by Montana state library commission. The Montana state library commission shall receive and administer the appropriation for state funding to public library federations. The commission shall allocate such appropriation to three types of grant programs according to section 44-307 and shall make grants to duly constituted library federations according to program applications submitted to and approved by the commission. Federations receiving grant moneys shall report semiannually to the commission concerning the progress of the various projects for which state funding grants have been received, which report shall contain an accounting for all grant funds received.

History: En. 44-305 by Sec. 2, Ch. 416, L. 1975.

44-306. Definitions of grant programs. (1) Basic grant defined: Basic grants are annual grants given to all federation headquarters libraries for the purpose of improving public library services within the federation and enabling public libraries within the federation to achieve and maintain the Montana public library standards as adopted and amended from time to time by the Montana state library commission.

(2) Establishment grant defined: Establishment grants are grants to federation headquarters libraries in order to provide basic library service to governmental units participating in library federations for the first time. The local governmental unit must contract with the headquarters library for federation services according to the provisions of section 44-213, and must contribute to the costs of providing such services. All funds will be administered by the federation headquarters library.

(3) Special project grant defined: Special project grants are grants to federation headquarters libraries to implement services not provided for in basic grants or to provide construction funds or remodeling funds. Grants for construction or remodeling must be equally matched by local funds; grants for services may fund the full cost of such services.

History: En. 44-306 by Sec. 3, Ch. 416, L. 1975.

44-307. Allocation of funds by grant program. The Montana state library commission shall allocate state funding appropriations among three grant programs on the following basis: sixty per cent (60%) of each annual appropriation shall be allocated to the basic grant program; thirty per cent (30%) of each annual appropriation shall be allocated to

the establishment grant program; and ten per cent (10%) of each annual appropriation shall be allocated to the special project grant program.

History: En. 44-307 by Sec. 4, Ch. 416,
L. 1975.

44-308. Formulae for distribution of grants. (1) The formula for distribution of basic grants among federations will be determined by multiplying population times area times percentage of local support. The population figure shall be the population of the area served by the federation as of the latest published federal census. The area figure shall be the number of square miles of the area served by the federation. The local support figure shall be the average of the percentage of the maximum allowable mill levy for public library services of each governmental unit participating in the federation actually expended for public library purposes by each such governmental unit from all sources. In computing the percentage of local support the amount actually expended for public library services shall not include building construction and remodeling funds, but it shall include federal or state revenue-sharing moneys, all purpose levies, library fund levies, local general fund moneys, in-kind services, or any other local public moneys expended for public library services. In computing the percentage of local support for a federation no participating governmental unit shall be included at more than one hundred per cent (100%) of local support, and in computing the basic grant no federation as a whole shall be included at more than one hundred per cent (100%) of local support.

Applications for basic grants for the following fiscal year must be submitted to the Montana state library commission by April 30 preceding the fiscal year.

(2) Establishment grants may be applied for any time during the biennium until January 1 of the last year of the biennium. Any funds not granted by January 1 of the last year of the biennium will be allocated to special project grants and distributed by the Montana state library commission according to the special project grant plans approved.

(3) Applications and plans for special project grants shall be submitted no later than March 1 of the second year of the biennium. Any moneys not granted by April 1 of the second year of the biennium will be allocated to the basic grant fund and distributed according to the basic grant formula for the following fiscal year.

History: En. 44-308 by Sec. 5, Ch. 416,
L. 1975.

CHAPTER 4—STATE LAW LIBRARY

- Section 44-402. Location—board of trustees.
44-403. Powers and duties of board.
44-405. Rules for use of library.
44-411. Index to session laws.

44-402. Location—board of trustees. The state law library of the state of Montana shall be located in the capitol building at Helena, Mon-

tana, and shall be in the immediate custody and subject to the control of a board of trustees, consisting of the chief justice and the justices of the supreme court of the state of Montana.

History: En. Sec. 2, Ch. 153, L. 1949; amd. Sec. 1, Ch. 142, L. 1977.

Amendments

The 1977 amendment deleted the requirement that there be 7 members of the board of trustees; deleted "the sec-

retary of state and the state auditor" from the end of the section; and deleted a former second sentence providing that the members of the board would serve without compensation and their terms were to be identical with the term of the chief justice and the associate justices.

44-403. Powers and duties of board. The powers and duties of said board are as follows:

(1) to (5). * * * [Same as parent volume.]

(6) To report as provided in section 2 [82-4002] of this act.

(7). * * * [Same as parent volume.]

History: En. Sec. 3, Ch. 153, L. 1949; amd. Sec. 14, Ch. 93, L. 1969.

Amendments

The 1969 amendment substituted "as provided in section 2 of this act" for "to the governor, biennially, a statement of all

important transactions of the board, and of the operations of the library, with suggestions and recommendations as to what the board deems necessary for the increased utility and efficiency of the library" in subdivision (6).

44-404. Repealed.

Repeal

Section 44-404 (Sec. 4, Ch. 153, L. 1949; Sec. 21, Ch. 177, L. 1965), relating

to the term of office of the librarian, was repealed by Sec. 3, Ch. 142, Laws 1977.

44-405. Rules for use of library. (1) The state law library shall be maintained and operated for the use of the members of the supreme court, the members of the legislature, and the several officers of the senate and of the house of representatives, for state officers and employees, for members of the bar of the supreme court of Montana, for members of the bar of supreme courts of other states while in attendance before the supreme court of Montana, and members of the general public agreeing to the rules established by the librarian.

(2) The librarian shall develop and maintain an adequate collection and services to fulfill the needs of library users and shall establish procedures for the maintenance and control of the collection.

History: En. Sec. 5, Ch. 153, L. 1949; amd. Sec. 2, Ch. 142, L. 1977.

Amendments

The 1977 amendment deleted former subdivisions (1) through (7), relating to duties of librarian; redesignated former subdivision (8) as subsection (1); substituted "rules established by the librarian" for "rules and regulations established by the board of trustees and enforced by the librarian" at the end of subsection (1); deleted the former second,

third and fourth sentences of the first paragraph of subsection (1); deleted the former second and third paragraphs of subsection (1); added subsection (2); and made minor changes in phraseology and punctuation. For prior version, see parent volume.

Repealing Clause

Section 3 of Ch. 142, Laws 1977 read "Sections 44-404, 44-408, 44-409, and 44-410, R. C. M. 1947, are repealed."

44-407. Repealed.

Repeal

This section (Sec. 7, Ch. 153, L. 1949),

relating to the state law library fund, was repealed by Sec. 242, Ch. 147, Laws 1963.

44-408 to 44-410. Repealed.**Repeal**

Sections 44-408 to 44-410 (Secs. 8 to 10, Ch. 153, L. 1949; Sec. 2, Ch. 205, L. 1955; Sec. 13, Ch. 97, L. 1961; Sec. 85,

Ch. 147, L. 1963), relating to the state law library, were repealed by Sec. 3, Ch. 142, Laws 1977.

44-411. Index to session laws. It shall be the duty of the legislative services division of the legislative council to prepare a suitable index of all the laws and resolutions passed or adopted at each session of the legislative assembly of Montana. Such index shall be a thorough index of such laws and resolutions, and of each subject contained in or covered by such laws and resolutions, together with such cross-index as will assist in readily finding any subject or matter contained in such volume; and for the purpose of procuring and preserving uniformity in such indexes, the index of each succeeding volume of the session laws shall conform, as near as practicable, with those of the volumes preceding it. There shall also be prepared for each volume of such laws an additional index, showing what sections of the several codes of this state, and what session laws have been amended, repealed, altered, or changed by any laws published in that volume, which shall be known and designated as the "code index."

History: En. Sec. 11, Ch. 153, L. 1949; amd. Sec. 1, Ch. 128, L. 1973.

sentence; deleted the clause following "code index," at the end of the section; and made minor changes in phraseology.

Amendments

The 1973 amendment substituted "legislative services division of the legislative council" for "state law librarian" in the first sentence; deleted "prepared by said librarian" from the end of the second

Repealing Clause

Section 2 of Ch. 128, Laws 1973 read "Section 44-412, R. C. M. 1947, is repealed."

44-412. Repealed.**Repeal**

Section 44-412 (Sec. 12, Ch. 153, L. 1949; Sec. 86, Ch. 147, L. 1963), relating to stenographic assistance to prepare the

index to the session laws, was repealed by Sec. 2, Ch. 128, Laws 1973. For new law, see sec. 44-411.

CHAPTER 5—HISTORICAL SOCIETY—LIBRARY AND MUSEUM

Section 44-515.1. Historical library authorized.

44-516. Historical society continued and perpetuated—purposes.

44-517. Definition of terms.

44-518. Historical library and museum independent of other state libraries, museums, or galleries.

44-519. Board of trustees—appointment and terms of members.

44-520. Qualifications of trustees.

44-521. Executive committee of trustees.

44-523. Powers and duties of trustees.

44-523.1. Creation and purpose of historic records network.

44-523.2. Funding.

44-524. Director's responsibility—assistants and employees.

44-525. Official seal of society.

44-526. Furnishings and fittings in veterans' and pioneers' building.

44-527. Fund raising drives—revenues and receipts.

44-528. Fine arts' commission abolished.

44-501 to 44-515. Repealed.**Repeal**

These sections (Secs. 1 to 15, Ch. 134, L. 1949; Secs. 14, 19, Ch. 97, L. 1961), relating to the historical society and the historical library and museum, were repealed by Sec. 14, Ch. 47, Laws 1963.

Sections 46 to 48, Ch. 147, Laws 1963, purported to amend sections 44-509, 44-510, and 44-514, respectively; however, under the rule of section 43-515, such amendments were void and did not revive the amended sections.

44-515.1. Historical library authorized. There is a historical library, to be maintained and operated by the Montana historical society.

History: En. 44-515.1 by Sec. 4, Ch. 3, L. 1977.

44-516. Historical society continued and perpetuated—purposes. The historical society of Montana, originally organized under the provisions of an act of the legislative assembly of the territory of Montana, entitled “an act to incorporate the historical society of Montana,” approved February 2, 1865, and thereafter made to become the historical society of the state of Montana by an act approved March 4, 1891, entitled “an act concerning the historical society for the state of Montana and making an appropriation therefor,” and by “an act to perpetuate the historical society of the state of Montana,” approved March 1, 1949, is hereby continued and perpetuated as the “Montana Historical Society” and as such constitutes an agency of state government for the use, learning, culture and enjoyment of the citizens of the state and for the acquisition, preservation and protection of historical records, art archival and museum objects, historical places, sites and monuments and the custody, maintenance and operation of the historical library, museums, art galleries, and historical places, sites and monuments.

History: En. Sec. 1, Ch. 47, L. 1963.

Title of Act

An act continuing and perpetuating the Montana historical society and prescribing the powers and duties of the board of trustees

of the society; abolishing the Montana fine arts' commission; and repealing sections 44-501, 44-502, 44-503, 44-504, 44-505, 44-506, 44-507, 44-508, 44-509, 44-510, 44-511, 44-512, 44-513, 44-514, 44-515, 19-119, 19-120 and 19-121, R. C. M. 1947.

44-517. Definition of terms. As used in this act:

- (1) “society” means the Montana historical society and includes:
 - (a) the historical library and its contents;
 - (b) any museums and art galleries and their contents acquired by the trustees;
 - (c) any historical places, sites, or monuments acquired or developed by the society;
 - (d) any divisions, departments, and activities operated in conjunction with the historical library as are established by the trustees; and
 - (e) any books, papers, maps, charts, manuscripts, photographs, writings, records, objects of history and art, paintings, engravings, relics, collections of artifacts and minerals, furniture, or fixtures acquired by the trustees;
- (2) “trustees” means the board of trustees of the Montana historical society.

(3) "committee" means the executive committee of the board of trustees of the Montana historical society.

(4) "Historic records" means manuscripts, papers, maps, charts, journals, diaries, photographs, business records, voice recordings, films, video tapes, or other records illustrative of the history of Montana in particular, and generally of the region.

(5) "Historic records network" means an agreement between the Montana historical society and the Montana university system to facilitate exchange and cooperation in the use, acquisition, and preservation of historic records.

History: En. Sec. 2, Ch. 47, L. 1963; amd. Sec. 5, Ch. 3, L. 1977; amd. Sec. 1, Ch. 366, L. 1977.

Amendments

Chapter 3, Laws of 1977, substituted "historical library and its contents" at the end of subdivision (1) (a) for "historical and miscellaneous libraries and their contents"; and made minor changes in phraseology, punctuation and style.

Chapter 366, Laws of 1977, added subdivisions (4) and (5); and made minor changes in punctuation and style.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 3 and once by Ch. 366. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

44-518. Historical library and museum independent of other state libraries, museums, or galleries. The historical library and any historical museum administered by the society in accordance with the provisions of this act shall be independent of any other library, museum, or gallery owned, maintained, or operated by the state of Montana.

History: En. Sec. 3, Ch. 47, L. 1963; amd. Sec. 6, Ch. 3, L. 1977.

historical library and any historical museum" at the beginning of the section for "Any historical library or museum"; and made a minor change in punctuation.

Amendments

The 1977 amendment substituted "The

44-519. Board of trustees—appointment and terms of members. The government and administration of the society is vested in a board of fifteen (15) trustees, appointed by the governor, by and with the consent of the senate. Three (3) each of the original members of the board shall be appointed for one (1), two (2), three (3), four (4) and five (5) year terms. An appointment to replace a member whose term has expired shall be for five (5) years. An appointment to replace a member whose term has not expired shall be for the unexpired term.

History: En. Sec. 4, Ch. 47, L. 1963.

Cross-References

Appointment and terms of members of board after reorganization, sec. 82A-507 (2).

Removal of Director of State Historical Society

Under this section and sections 44-523

and 59-405 the power to remove the director of the state historical society lies in the board of trustees of the state historical society and it may do so without notice or opportunity to be heard. State ex rel. MacGivra v. District Court of the First Judicial District, 148 M 182, 418 P 2d 874, 876.

44-520. Qualifications of trustees. (1) Trustees shall be appointed because of their special interest in the accomplishment of the purposes of the society, their fitness for discharging these duties, and their willing-

ness to devote time and effort in the public interest. The governor, insofar as possible, shall appoint trustees from the various geographical areas of the state.

(2) Of the 15 trustees, at least one shall be a recognized historian and at least one shall be a recognized archeologist.

(3) The governor shall appoint these professionals to the board of trustees as vacancies occur.

History: En. Sec. 5, Ch. 47, L. 1963; amd. Sec. 7, Ch. 3, L. 1977; amd. Sec. 1, Ch. 520, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 3 and once by Ch. 520. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 3, Laws of 1977, deleted "and to serve without compensation" at the end of the first sentence; and made minor changes in phraseology, punctuation and style.

Chapter 520, Laws of 1977, added subsections (2) and (3); and made minor changes in style.

44-521. Executive committee of trustees. The trustees may select an executive committee of five (5) trustees and delegate to the committee such functions in aid of the efficient administration of the affairs of the society as the trustees deem advisable.

History: En. Sec. 6, Ch. 47, L. 1963.

44-522. Repealed.

Repeal

Section 44-522 (Sec. 7, Ch. 47, L. 1963), relating to reimbursement of trustees,

was repealed by Sec. 13, Ch. 3, Laws 1977.

44-523. Powers and duties of trustees. The powers and duties of the trustees are as follows:

(1) to elect annually from among their number a president, a vice-president, and a secretary;

(2) to adopt bylaws for their own government and to make rules and regulations, not inconsistent with law, for the proper administration of the society in the interests of preserving the rich heritage of this state and its people;

(3) to appoint a director, fix his salary, and prescribe his duties and responsibilities;

(4) to create such classes of memberships in the society as they deem desirable, to determine the qualifications for any class of membership, and to set the fees to be paid for such memberships;

(5) to sell or exchange publications and other museum or art objects and use the money arising from such sales for the operation of the society and for the acquisition of historical materials and objects of art;

(6) to sell or exchange surplus or duplicate books, surplus museum or art objects or artifacts not pertinent to the region encompassed by the Montana historical society mission and to use the money arising from such sales exclusively for acquisitions of library, art, and museum artifacts;

(7) to see that the collections and properties of the society are maintained in good order and repair;

(8) to report to the governor and the legislature biennially. The report shall include a statement of all important transactions and acquisitions, with suggestions and recommendations for the better realization of the purposes of the society and the improvement of its collections and services.

(9) to accept, receive and administer in the name of the society, any gifts, donations, properties, securities, bequests and legacies that may be made to the society. Moneys received by donation, gift, bequest or legacy, unless otherwise provided by the donor, shall be deposited in the state treasury and used for the general operation of the society.

(10) to collect, assemble, preserve, and display where appropriate, all obtainable books, pamphlets, maps, charts, manuscripts, journals, diaries, papers, business records, paintings, drawings, engravings, photographs, statuary, models, relics, and all other materials illustrative of the history of Montana in particular, and generally of the Pacific Northwest, Northern Rocky Mountain and Northern Great Plains regions, and of the United States of America when pertinent; to procure from pioneers, early settlers, and others, narratives of the events relative to the early settlement of Montana, the Indian occupancy, Indian and other wars, overland travel and immigration to the territories of the west, and all other related documents of Montana's history, development and society; to gather contemporary information, specimens, and all other materials which exhibit faithfully the distinctive historical and contemporary characteristics of the area with particular attention to Indian, military and pioneer artifacts and implements; to collect and preserve such natural history objects as fossils, plants, minerals and animals; to collect and preserve books, maps, manuscripts, and other materials as will tend to facilitate historical, scientific, and antiquarian research; to promote the study of Montana history by lectures and publications; to generally foster and encourage the fine arts and cultural activities in Montana; to receive for and on behalf of the state by donation or otherwise, art objects of any kind and description and to exhibit and circulate such objects in Montana and elsewhere; and to microfilm papers or documents in danger of disappearance or injury;

(11) to coordinate the administration of the historic records network established in 44-523.1.

History: En. Sec. 8, Ch. 47, L. 1963; amd. Sec. 1, Ch. 204, L. 1975; amd. Sec. 2, Ch. 366, L. 1977.

Amendments

The 1975 amendment deleted "surplus copies of books or" in subdivision (5) before "other museum or art objects"; inserted subdivision (6); and redesignated former subdivisions (6) to (9) as (7) to (10).

The 1977 amendment added subdivision (11); and made minor changes in punctuation and style.

Cross-References

Board to act in advisory capacity, sec. 82A-507(3).

Removal of Director of State Historical Society

Under this section and sections 44-519 and 59-405 the power to remove the director of the state historical society lies in the board of trustees of the state historical society and it may do so without notice or opportunity to be heard. *State ex rel. MacGivra v. District Court of the First Judicial District*, 148 M 182, 418 P 2d 874, 876.

44-523.1. Creation and purpose of historic records network. (1) The trustees of the Montana historical society shall establish and coordinate the administration of an historic records network.

(2) The staff of the society shall aid staff archivists and librarians at the university units in their work of acquiring, cataloguing, processing, microfilming, and preserving historic records.

History: En. 44-523.1 by Sec. 3, Ch. 366, L. 1977. network between the Montana historical society and the Montana university system; amending sections 44-517 and 44-523, R. C. M. 1947.

Title of Act. An act to create an historic records

44-523.2. Funding. The historic records network shall operate within the budgets of the historical society and the university system.

History: En. 44-523.2 by Sec. 4, Ch. 366, L. 1977.

44-524. Director's responsibility—assistants and employees. The director is fully responsible for the immediate direction, management and control of the society, subject to the general programs and policies established by the trustees. The director may appoint and employ all assistants and employees required for the management of the historical society, subject to approval by the trustees.

History: En. Sec. 9, Ch. 47, L. 1963.

References

State ex rel. MacGivra v. District Court of the First Judicial District, 148 M 182, 418 P 2d 874, 876.

44-525. Official seal of society. The design of the official seal of the society shall be substantially as follows: A central group representing a covered immigrant wagon drawn by two yoke of oxen, showing prairie in the foreground, mountains in the background and directly beneath it the figures "1865." The seal shall be two inches in diameter and surrounded by the words, "Montana Historical Society Seal."

History: En. Sec. 10, Ch. 47, L. 1963.

44-526. Furnishings and fittings in veterans' and pioneers' building. The offices, library, museums and galleries, and quarters for the activities of the society in the veterans' and pioneers' memorial building shall be decorated, fitted, furnished and maintained in dignity and in harmony with the purposes of the society. All furniture and fittings for storage and the use of the library shall be, in design and function, adapted to the efficient and dignified operation and administration of the activities of the society.

History: En. Sec. 11, Ch. 47, L. 1963.

44-527. Fund raising drives—revenues and receipts. The society may engage in such fund raising drives and public contribution campaigns as will contribute to its continued development and support. It may produce, reproduce, sell, or exchange art objects, film, books, photographs, maga-

zines, pamphlets, and museum objects which are appropriate and will bring credit to the society and to Montana. It may also receive fees, commissions and royalties on the display and sale of arts and crafts. All profits, revenues, royalties or fees received in any such manner shall be deposited in the state treasury and may not be used for any purposes other than the improvement, development and operation of the society.

History: En. Sec. 12, Ch. 47, L. 1963.

44-528. Fine arts' commission abolished. The Montana fine arts' commission is abolished. All records, property and moneys of the Montana fine arts' commission are transferred to the society.

History: En. Sec. 13, Ch. 47, L. 1963.

Repealing Clause

Section 14 of Ch. 47, Laws 1963 read
"Sections 44-501, 44-502, 44-503, 44-504,

44-505, 44-506, 44-507, 44-508, 44-509, 44-510, 44-511, 44-512, 44-513, 44-514, 44-515, 19-119, 19-120 and 19-121, R. C. M. 1947, are repealed."

44-529. Repealed.

Repeal

Section 44-529 (Sec. 2, Ch. 324, L. 1967), relating to admission fees for the

antique automobile collection, was repealed by Sec. 13, Ch. 3, Laws 1977.

CHAPTER 6—INTERSTATE LIBRARY COMPACT

Section 44-601. Text of library compact.

44-602. Executive officer of state library commission as administrator.

44-601. Text of library compact. The Interstate Library Compact is hereby approved, enacted into law, and entered into by the state of Montana, which compact is in full as follows:

INTERSTATE LIBRARY COMPACT

Article I. Policy and Purpose

Because the desire for the services provided by libraries transcends governmental boundaries and can most effectively be satisfied by giving such services to communities and people regardless of jurisdictional lines, it is the policy of the state's party to this compact to co-operate and share their responsibilities; to authorize co-operation and sharing with respect to those types of library facilities and services which can be more economically or efficiently developed and maintained on a co-operative basis; and to authorize co-operation and sharing among localities, states and others in providing joint or co-operative library services in areas where the distribution of population or of existing and potential library resources make the provision of library service on an interstate basis the most effective way of providing adequate and efficient service.

Article II. Definitions

As used in this compact:

(a) "Public library agency" means any unit or agency of local or state government operating or having power to operate a library.

(b) "Private library agency" means any nongovernmental entity which operates or assumes a legal obligation to operate a library.

(c) "Library agreement" means a contract establishing an interstate library district pursuant to this compact or providing for the joint or co-operative furnishing of library services.

Article III. Interstate Library Districts

(a) Any one or more public library agencies in a party state in co-operation with any public library agency or agencies in one or more other party states may establish and maintain an interstate library district. Subject to the provisions of this compact and any other laws of the party states which pursuant hereto remain applicable, such district may establish, maintain and operate some or all of the library facilities and services for the area concerned in accordance with the terms of a library agreement therefor. Any private library agency or agencies within an interstate library district may co-operate therewith, assume duties, responsibilities and obligations thereto, and receive benefits therefrom as provided in any library agreement to which such agency or agencies become party.

(b) Within an interstate library district, and as provided by a library agreement, the performance of library functions may be undertaken on a joint or co-operative basis or may be undertaken by means of one or more arrangements between or among public or private library agencies for the extension of library privileges to the use of facilities or services operated or rendered by one or more of the individual library agencies.

(c) If a library agreement provides for joint establishment, maintenance or operation of library facilities or services by an interstate library district, such district shall have power to do any one or more of the following in accordance with such library agreement:

1. Undertake, administer and participate in programs or arrangements for securing, lending or servicing books and other publications, any other materials suitable to be kept or made available by libraries, library equipment or for the dissemination of information about libraries, the value and significance of particular items therein, and the use thereof.

2. Accept for any of its purposes under this compact any and all donations, and grants of money, equipment, supplies, materials, and services, (conditional or otherwise), from any state or the United States or any subdivision or agency thereof, or interstate agency, or from any institution, person, firm or corporation, and receive, utilize and dispose of the same.

3. Operate mobile library units or equipment for the purpose of rendering bookmobile service within the district.

4. Employ professional, technical, clerical and other personnel, and

fix terms of employment, compensation and other appropriate benefits; and where desirable, provide for the in-service training of such personnel.

5. Sue and be sued in any court of competent jurisdiction.

6. Acquire, hold, and dispose of any real or personal property or any interest or interests therein as may be appropriate to the rendering of library service.

7. Construct, maintain and operate a library, including any appropriate branches thereof.

8. Do such other things as may be incidental to or appropriate for the carrying out of any of the foregoing powers.

Article IV. Interstate Library Districts, Governing Board

(a) An interstate library district which establishes, maintains or operates any facilities or services in its own right shall have a governing board which shall direct the affairs of the district and act for it in all matters relating to its business. Each participating public library agency in the district shall be represented on the governing board which shall be organized and conduct its business in accordance with provision therefor in the library agreement. But in no event shall a governing board meet less often than twice a year.

(b) Any private library agency or agencies party to a library agreement establishing an interstate library district may be represented on or advise with the governing board of the district in such manner as the library agreement may provide.

Article V. State Library Agency Co-operation

Any two or more state library agencies of two or more of the party states may undertake and conduct joint or co-operative library programs, render joint or co-operative library services, and enter into and perform arrangements for the co-operative or joint acquisition, use, housing and disposition of items or collections of materials which, by reason of expense, rarity, specialized nature, or infrequency of demand therefor would be appropriate for central collection and shared use. Any such programs, services or arrangements may include provision for the exercise on a co-operative or joint basis of any power exercisable by an interstate library district and an agreement embodying any such program, service or arrangement shall contain provisions covering the subjects detailed in Article VI of this compact for interstate library agreements.

Article VI. Library Agreements

(a) In order to provide for any joint or co-operative undertaking pursuant to this compact, public and private library agencies may enter into library agreements. Any agreement executed pursuant to the provisions of this compact shall, as among the parties to the agreement:

1. Detail the specific nature of the services, programs, facilities, arrangements or properties to which it is applicable.
2. Provide for the allocation of costs and other financial responsibilities.
3. Specify the respective rights, duties, obligations and liabilities of the parties.
4. Set forth the terms and conditions for duration, renewal, termination, abrogation, disposal of joint or common property, if any, and all other matters which may be appropriate to the proper effectuation and performance of the agreement.

(b) No public or private library agency shall undertake to exercise itself, or jointly with any other library agency, by means of a library agreement any power prohibited to such agency by the constitution or statutes of its state.

(c) No library agreement shall become effective until filed with the compact administrator of each state involved, and approved in accordance with Article VII of this compact.

Article VII. Approval of Library Agreements

(a) Every library agreement made pursuant to this compact shall, prior to and as a condition precedent to its entry into force, be submitted to the attorney general of each state in which a public library agency party thereto is situated, who shall determine whether the agreement is in proper form and compatible with the laws of his state. The attorneys general shall approve any agreement submitted to them unless they shall find that it does not meet the conditions set forth herein and shall detail in writing addressed to the governing bodies of the public library agencies concerned the specific respects in which the proposed agreement fails to meet the requirements of law. Failure to disapprove an agreement submitted hereunder within ninety days of its submission shall constitute approval thereof.

(b) In the event that a library agreement made pursuant to this compact shall deal in whole or in part with the provision of services or facilities with regard to which an officer or agency of the state government has constitutional or statutory powers of control, the agreement shall, as a condition precedent to its entry into force, be submitted to the state officer or agency having such power of control and shall be approved or disapproved by him or it as to all matters within his or its jurisdiction in the same manner and subject to the same requirements governing the action of the attorneys general pursuant to paragraph (a) of this article. This requirement of submission and approval shall be in addition to and not in substitution for the requirement of submission to and approval by the attorneys general.

Article VIII. Other Laws Applicable

Nothing in this compact or in any library agreement shall be construed to supersede, alter or otherwise impair any obligation imposed on

any library by otherwise applicable law, nor to authorize the transfer or disposition of any property held in trust by a library agency in a manner contrary to the terms of such trust.

Article IX. Appropriations and Aid

(a) Any public library agency party to a library agreement may appropriate funds to the interstate library district established thereby in the same manner and to the same extent as to a library wholly maintained by it and, subject to the laws of the state in which such public library agency is situated, may pledge its credit in support of an interstate library district established by the agreement.

(b) Subject to the provisions of the library agreement pursuant to which it functions and the laws of the states in which such district is situated, an interstate library district may claim and receive any state and federal aid which may be available to library agencies.

Article X. Compact Administrator

Each state shall designate a compact administrator with whom copies of all library agreements to which his state or any public library agency thereof is party shall be filed. The administrator shall have such other powers as may be conferred upon him by the laws of his state and may consult and co-operate with the compact administrators of other party states and take such steps as may effectuate the purposes of this compact. If the laws of a party state so provide, such state may designate one or more deputy compact administrators in addition to its compact administrator.

Article XI. Entry into Force and Withdrawal

(a) This compact shall enter into force and effect immediately upon its enactment into law by any two states. Thereafter, it shall enter into force and effect as to any other state upon the enactment thereof by such state.

(b) This compact shall continue in force with respect to a party state and remain binding upon such state until six months after such state has given notice to each other party state of the repeal thereof. Such withdrawal shall not be construed to relieve any party to a library agreement entered into pursuant to this compact from any obligation of that agreement prior to the end of its duration as provided therein.

Article XII. Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this com-

compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: En. Sec. 1, Ch. 119, L. 1967. law the Interstate Library Compact and designating the executive officer of the state library commission as compact administrator for said compact.

Title of Act

An act approving and enacting into

44-602. Executive officer of state library commission as administrator. The executive officer of the state library commission shall be the compact administrator of the Interstate Library Compact.

History: En. Sec. 2, Ch. 119, L. 1967.

TITLE 45—LIENS

- Chapter 1. Liens in general, definitions, creation and effect, 45-109, 45-112, 45-116.
3. Redemption from liens—extinction, 45-301, 45-308.
4. Loggers' liens, 45-401.
5. Mechanics' liens, 45-501 to 45-502.1, 45-511, 45-513 to 45-515.
6. Liens for salaries and wages, 45-603.
7. Crop liens for seed, grain and hail insurance, 45-704, 45-707.
8. Threshermen's liens, 45-801, 45-802, 45-808, 45-809.
9. Farm laborers' liens, 45-911.
10. Laborers' and materialmen's liens on oil and gas wells and pipelines, 45-1003, 45-1004.1 to 45-1004.3.
11. Miscellaneous liens, 45-1106, 45-1107.
13. Stoppage in transit, Repealed—Section 10-102, Chapter 264, Laws of 1963.
14. Crop or grain lien for dusting or spraying, 45-1410.
15. Federal tax lien, 45-1501 to 45-1507.

CHAPTER 1—LIENS IN GENERAL, DEFINITIONS, CREATION AND EFFECT

- Section 45-109. Lien on future interest.
45-112. Certain contracts void.
45-116. Holder of lien not entitled to compensation.

45-106. (8224) Repealed.

Repeal This section (Sec. 3735, Civ. C. 1895), relating to mortgages and pledges, was repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

45-109. (8227) Lien on future interest. An agreement may be made to create a lien upon property not yet acquired by the party agreeing to give the lien, or not yet in existence. Except as otherwise provided by the Uniform Commercial Code, in such case the lien agreed for attaches from the time when the party agreeing to give it acquires an interest in the thing, to the extent of such interest. [Effective January 1, 1965.]

History: En. Sec. 3742, Civ. C. 1895; re-en. Sec. 5712, Rev. C. 1907; re-en. Sec. 8227, R. C. M. 1921; amd. Sec. 11-118, Ch. 264, L. 1963. Cal. Civ. C. Sec. 2883. Field Civ. C. Sec. 1589.

Amendment

The 1963 amendment inserted "Except as otherwise provided by the Uniform Commercial Code" at the beginning of the second sentence.

45-112. (8230) Certain contracts void. Except as otherwise provided by the Uniform Commercial Code: all contracts for the forfeiture of property subject to a lien, in satisfaction of the obligation secured thereby, and all contracts in restraint of the right of redemption from a lien, are void. [Effective January 1, 1965.]

History: En. Sec. 3751, Civ. C. 1895; re-en. Sec. 5715, Rev. C. 1907; re-en. Sec. 8230, R. C. M. 1921; amd. Sec. 11-119, Ch. 264, L. 1963. Cal. Civ. C. Sec. 2889. Based on Field Civ. C. Sec. 1592.

Amendment

The 1963 amendment inserted "Except as otherwise provided by the Uniform Commercial Code" at the beginning of the section.

45-116. (8234) Holder of lien not entitled to compensation. Except as otherwise provided by the Uniform Commercial Code: One who holds property by virtue of a lien thereon is not entitled to compensation from

the owner thereof for any trouble or expense which he incurs respecting it, except to the same extent as a borrower, under sections 47-109 and 47-110. [Effective January 1, 1965.]

History: En. Sec. 3755, Civ. C. 1895; re-en. Sec. 5719, Rev. C. 1907; re-en. Sec. 8234, R. C. M. 1921; amd. Sec. 11-120, Ch. 264, L. 1963. Cal. Civ. C. Sec. 2892. Field Civ. C. Sec. 1596.

Amendment

The 1963 amendment inserted "Except as otherwise provided by the Uniform Commercial Code" at the beginning of the section.

CHAPTER 2—PRIORITY OF LIENS

45-203. (8237) Order of resort to different funds.

Settlement of Personal Injury Claim

Where injured party received payment in settlement of his personal injury claim in the form of three different drafts, the settlement was nevertheless one fund against which hospital lien could be asserted according to its priority rather than three different funds to which mar-

shaling principles would be applied in discharging attorney's lien, even though one of the drafts was in the amount of the hospital bill and included the hospital as payee. *Sisters of Charity of Providence of Montana v. Nichols*, 157 M 106, 483 P 2d 279.

CHAPTER 3—REDEMPTION FROM LIENS—EXTINCTION

Section 45-301. Right to redeem.

45-308. When restoration extinguishes lien.

45-301. (8238) Right to redeem. Except as otherwise provided by the Uniform Commercial Code, every person, having an interest in property subject to a lien, has a right to redeem it from the lien, at any time after the claim is due, and before his right of redemption is foreclosed. [Effective January 1, 1965.]

History: En. Sec. 3780, Civ. C. 1895; re-en. Sec. 5723, Rev. C. 1907; re-en. Sec. 8238, R. C. M. 1921; amd. Sec. 11-121, Ch. 264, L. 1963. Cal. Civ. C. Sec. 2903.

Amendment

The 1963 amendment inserted "Except as otherwise provided by the Uniform Commercial Code" at the beginning of the section.

45-308. (8245) When restoration extinguishes lien. Except as otherwise provided by the Uniform Commercial Code: the voluntary restoration of property to its owner by the holder of a lien thereon, dependent upon possession, extinguishes the lien as to such property, unless otherwise agreed by the parties, and extinguishes it, notwithstanding any such agreement, as to creditors of the owner and persons subsequently acquiring a title to the property, or a lien thereon, in good faith, and for a good consideration. [Effective January 1, 1965.]

History: En. Sec. 3794, Civ. C. 1895; re-en. Sec. 5730, Rev. C. 1907; re-en. Sec. 8245, R. C. M. 1921; amd. Sec. 11-122, Ch. 264, L. 1963. Cal. Civ. C. Sec. 2913. Based on Field Civ. C. Sec. 1607.

Amendment

The 1963 amendment inserted "Except as otherwise provided by the Uniform Commercial Code" at the beginning of the section.

CHAPTER 4—LOGGERS' LIENS

Section 45-401. Who entitled to lien.

45-401. Who entitled to lien. Every person, general partnership, limited partnership, corporation or association performing labor upon, or who shall assist in obtaining or securing sawlogs, piling, railroad ties,

cordwood, or other timber, has a lien upon the same and upon all other sawlogs, piling, railroad ties, cordwood, or other timber which, at the time of the filing of the claim or lien hereinafter provided, belonged to the person or corporation for whom the labor was performed, for the work or labor done upon or in obtaining or securing the particular sawlogs, piling, railroad ties, cordwood, or other timber in said claim or lien described, whether such work or labor was done at the instance of the owner of the same or his agent, or a contractor or subcontractor, or any person in behalf of such owner or his agent, or a contractor or subcontractor. The cook in a logging-camp shall be regarded as a person who assists in obtaining or securing any of the timber herein mentioned.

History: En. Sec. 1, p. 126, L. 1899; re-en. Sec. 5819, Rev. C. 1907; amd. Sec. 1, Ch. 60, L. 1909; re-en. Sec. 8318, R. C. M. 1921; amd. Sec. 1, Ch. 59, L. 1967. Cal. Civ. C. Sec. 3065.

Amendments

The 1967 amendment inserted "general partnership, limited partnership, corpora-

tion or association" after "Every person" at the beginning of the section.

Persons Entitled to Lien

A logging corporation acting in the capacity of an independent contractor was not a "person" as set forth in this chapter and was not entitled to a lien thereunder. *Jack Long Logging Co. v. Pyramid Mountain Lumber, Inc.*, 143 M 87, 387 P 2d 712.

45-407. (8324) Recording claim of lien.

Advances in Excess of Promised Compensation

Loggers who had originally agreed to compensation of \$5.00 per thousand board feet and who, upon finding that scaling process was not proceeding at a rapid enough rate to determine their payment

on a timely basis, agreed to an advance of fifty cents per tree cut, were not entitled to logger's lien on remaining timber cut but not scaled where they had received advances in excess of the original rate of compensation on all the timber cut. *Alexander v. Hardy*, — M —, 505 P 2d 1201.

45-419 to 45-421. (8336 to 8338) Repealed.

Repeal

Sections 45-419 to 45-421 (Secs. 3946 to 3948, Civ. C. 1895), relating to liens for

driving logs, were repealed by Sec. 1, Ch. 464, Laws 1977.

CHAPTER 5—MECHANICS' LIENS

- Section 45-501. Who entitled to lien.
 45-502. How lien perfected.
 45-502.1. Notice of completion.
 45-511. Who deemed owners.
 45-513. Substitution of bond allowed—filing—amount—condition.
 45-514. Lien discharged upon filing of bond.
 45-515. Action upon bond—period of limitation same.

45-501. (8339) Who entitled to lien. Every mechanic, miner, machinist, architect, foreman, engineer, builder, lumberman, artisan, workman, laborer, and any other person, performing any work and labor upon, or furnishing any material, machinery, or fixture for, any building, structure, bridge, flume, canal, ditch, aqueduct, mining claim, coal mine, quartz lode, tunnel, city or town lot, farm, ranch, fence, railroad, telegraph, telephone, electric light, gas, or waterworks or plant, or any improvements, upon complying with the provisions of this chapter, for his work or labor done, or material, machinery or fixtures furnished, has a lien upon the property upon which the work or labor is done or material is furnished.

History: En. Sec. 1, p. 332, Bannack Stat.; amd. Sec. 1, p. 509, Cod. Stat. 1871; re-en. Sec. 820, 5th Div. Rev. Stat. 1879; amd. Sec. 1370, 5th Div. Comp. Stat. 1887; amd. Sec. 2130, C. Civ. Proc. 1895; re-en. Sec. 7290, Rev. C. 1907; re-en. Sec. 8339, R. C. M. 1921; amd. Sec. 1, Ch. 23, L. 1925; amd. Sec. 1, Ch. 408, L. 1971. Cal. C. Civ. Proc. Sec. 1183.

Compiler's Note

The decision in *Caird Engineering Works v. Seven-up Gold Mining Co., Inc.*, 111 M 471, annotated under this section in the parent volume, is reported at 111 P 2d 267 rather than at 111 P 2d 1267.

Amendments

The 1971 amendment inserted a comma after "machinery" the first place that word appears.

Abandoned Improvements — Delay in Completion

Where contract specifically said that contractor's ability to continue work would be dependent upon prompt payment by owner as agreed and owner did not pay as agreed, contractor was allowed foreclosure of lien even though he was unable to complete the work. *Gramm v. Insurance Unlimited*, 141 M 456, 378 P 2d 662, distinguished in — M —, 518 P 2d 1168.

Claim Arising upon Contract

A mechanic's lien under this section and sections 45-502 to 45-512 is not a claim arising upon a contract under section 91-2704 and the lien is not lost because creditor's claim is not filed. *Hammer v. Chapin*, 256 F Supp 818, 820.

Materialmen

There could be no valid materialman's lien against owner where general contractor, subcontractor and materialman told owner that he was not dealing with materialman and that materialman was wholesaler and dealt only with contractors. *Glacier State Electric Supply Co. v. Hoyt*, 152 M 415, 451 P 2d 90.

Property Covered by Lien

Where defendant owned seven unpatented mining claims and leased such claims under agreement requiring lessee to do shaft and engineering work, and such work was subsequently done by plaintiff with knowledge of lessor, mechanic's lien held by plaintiff attached to all mining claims held by defendant, notwithstanding that plaintiff performed work on only one such claim in group of seven claims. *Fausett v. Blanchard*, 154 M 301, 463 P 2d 319.

Requirement of Contract

Subcontractor who verbally agreed with contractor to install electrical circuitry in residence was not entitled to lien against the homeowner where the contract between the homeowner and the general contractor specifically provided that the contractor was not entitled to subcontract work without the homeowner's written permission and the homeowner had not expressly or impliedly assented to the subcontractor's performance of the work; in order for a valid lien to be created under this section there must be a contract, express or implied, between the owner of the property and the subcontractor. *Intermountain Electric, Inc. v. Berndt*, — M —, 518 P 2d 1168.

Substantial Performance

Electrical subcontractor was not entitled to lien under this section where, after completing forty per cent of the agreed work and upon learning of the contractor's insolvency, he voluntarily abandoned the work without requesting a promise for payment from the homeowner. *Intermountain Electric, Inc. v. Berndt*, — M —, 518 P 2d 1168.

References

Frank J. Trunk & Son v. DeHaan, 143 M 442, 391 P 2d 353 (concurring opinion).

45-502. (8340) How lien perfected. (1) Every person wishing to avail himself of the benefits of this chapter must file with the county clerk of the county in which the property or premises mentioned in the preceding section is situated, and within ninety days after the material or machinery aforesaid has been furnished, or the work or labor performed, a just and true account of the amount due him, after allowing all credits, and containing a correct description of the property to be charged with such lien, verified by affidavit, but any error or mistake in the account or description does not affect the validity of the lien, if the property can be identified by the description; which paper containing the account, description, and affidavit is deemed the lien, and when there is an open account between the parties for labor, material, or machinery,

such lien may be filed within ninety days after the date of the last item in such account, and include all items and charges contained therein, for material or machinery furnished for, or work performed on, the property on which the lien is claimed.

(2) The time within which to perfect the lien by filing of the notice of lien is shortened if the provisions of section 3 [45-502.1] of this act are complied with and a notice of completion is timely filed, in which event such notice of lien must be filed within sixty (60) days immediately following the first publication of the notice of completion.

(3) The following acts of events constitute "completion of any work or improvement" for the purpose of filing a notice of completion:

(a) The written acceptance by the owner, his agent or his representative of the building, improvement or structure. The filing of a notice of completion shall not be considered as an acceptance of the building, improvement, or other structure.

(b) The cessation from labor for thirty (30) days upon any building, improvement or structure, or the alteration, addition to or repair thereof.

History: Ap. p. Sec. 6, p. 333, Bannack Stat.; amd. Sec. 6, p. 510, Cod. Stat. 1871; amd. Sec. 1, p. 84, L. 1874; re-en. Sec. 825, 5th Div. Rev. Stat. 1879; amd. Sec. 1371, 5th Div. Comp. Stat. 1887; amd. Sec. 1, p. 71, Ex. L. 1887; amd. Sec. 2131, C. Civ. Proc. 1895; en. Sec. 1, p. 162, L. 1901; re-en. Sec. 7291, Rev. C. 1907; re-en. Sec. 8340, R. C. M. 1921; amd. Sec. 2, Ch. 408, L. 1971. Cal. C. Civ. Proc. Sec. 1187.

Compiler's Note

The decision in *Caird Engineering Works v. Seven-up Gold Mining Co., Inc.*, 111 M 471, annotated under this section in the parent volume, is reported at 111 P 2d 267 rather than at 111 P 2d 1267.

Amendments

The 1971 amendment designated the former section as subsection (1); and added subsections (2) and (3).

Effect of Failure to File Lien within Ninety Days after Material Is Furnished—Subsequent Contract

Where no privity of contract existed between subcontractor and the owners of the improved building and subcontractor did not comply with the ninety-day limitation for filing lien, such subcontractor lost all right to sue owner who had paid prime contractor for work done, and subcontractor was also barred from adding on time period of a subsequent contract with owners for purposes of filing its mechanic's lien. *Frank J. Trunk & Son v. DeHaan*, 143 M 442, 391 P 2d 353.

Effect of Overstatement of Amount

Where there were indications that contractor had "padded the bill" for nearly \$4000 but no proof that he had done so with intent to defraud, he did not lose his

right to a mechanic's lien but the trial court should require an accounting. *Hammond v. Knievel*, 141 M 433, 378 P 2d 388.

Father and Son

Fact that father and son worked together on one of two projects and that they often worked together did not justify "tacking" the two projects together for purpose of determining timeliness of mechanic's lien filed by person furnishing them concrete where there were two distinct contracts and two distinct accounts; fact that lien was not timely as to one project did not render entire lien void, and it remained valid as to second project. *Tindall v. Negaard*, — M —, 507 P 2d 845.

Last Item in Open Account

Entries made in open account crediting owner for materials returned did not operate to keep ninety-day period allowed under this section for filing mechanic's lien from lapsing, since entry of credit for payment or for goods returned does not fall within ambit of "last item in such account"; legislature by that language meant last item furnished, not last entry in open account. *American Homes, Inc. v. Broadmoor Corp.*, 153 M 184, 455 P 2d 334.

Question of Continuous Open Account One of Fact

The question of whether a continuous open account existed some fifteen months after completion of the contracted construction work was one of fact and the finding by the trial court would not be disturbed on appeal when supported by evidence. *Hammond v. Knievel*, 141 M 433, 378 P 2d 388.

45-502.1. Notice of completion. (1) The owner may file a notice of completion at any time after the completion of any work or improvement.

(2) The notice of completion together with an affidavit of publication as hereinafter required shall be filed in the office of the county recorder of the county where the property is situated and the notice shall set forth:

(a) The date when the work or improvement was completed, or the date on which cessation from labor occurred first and the period of its duration.

(b) The owner's name or owners' names, as the case may be, the address of the owner or addresses of the owners, as the case may be, and the nature of the title, if any, of the person signing the notice.

(c) A description of the property sufficient for identification.

(d) The name of the contractor, if any.

(3) The notice shall be verified by the owner or his agent.

(4) A copy of the notice of completion shall be published once each week for three successive weeks in a newspaper of general circulation in the county where the land on which the work or improvement was performed is situated.

History: En. Sec. 3, Ch. 408, L. 1971.

Title of Act

An act to shorten the period for filing

mechanics' liens by providing for filing of a notice of completion and amending sections 45-501 and 45-502, R. C. M., 1947.

45-504. (8342) What property affected.

Compiler's Note

The decision in *Caird Engineering Works v. Seven-up Gold Mining Co., Inc.*, 111 M 471, annotated under these sections in the parent volume, is reported at 111 P 2d 267 rather than at 111 P 2d 1267.

Mining Claims

Limit of one acre to mechanic's lien, as set forth in this section, does not apply to mining claim. *Fausett v. Blanchard*, 154 M 301, 463 P 2d 319.

45-505. (8343) Leasehold interest—how affected.

Compiler's Note

The decision in *Caird Engineering Works v. Seven-up Gold Mining Co., Inc.*,

111 M 471, annotated under these sections in the parent volume, is reported at 111 P 2d 267 rather than at 111 P 2d 1267.

45-506. (8344) Priority of lien over mortgage or other liens.

Lien Preferred to Subsequent Mortgage

A mechanic's lien for performed work and furnished material for building, erected on land of decedent prior to his death, which was perfected August 23, 1963 after decedent's death, had priority over a mortgage executed by the suc-

cessor to the estate of the deceased on January 21, 1965 to the small business administration, an agency of the United States, which failed to protect itself by withholding a sufficient amount of the loan proceeds to retire the lien. *Hammer v. Chapin*, 256 F Supp 818, 820.

45-511. (8349) Who deemed owners. Every person, including guardians of minors, married persons, and any company, association, or corporation not tenants or lessees, for whose use, benefit, or enjoyment any property, building, structure, or improvement mentioned in this chapter

is constructed, repaired, or altered, is deemed the owner thereof for the purposes of this chapter.

History: En. Sec. 1387, 5th Div. Comp. Stat. 1887; amd. Sec. 3, p. 72, Ex. L. 1887; amd. Sec. 2140, C. Civ. Proc. 1895; re-en. Sec. 7300, Rev. C. 1907; re-en. Sec. 8349, R. C. M. 1921; amd. Sec. 24, Ch. 535, L. 1975.

Amendments

The 1975 amendment substituted "married persons" for "married women."

45-513. Substitution of bond allowed — filing — amount — condition. Whenever a mechanics' lien has been filed upon real property or any improvements thereon, as enumerated in section 45-501, R. C. M. 1947, the owner of any interest in such property, whether legal or beneficial, may, at any time before the lien claimant has commenced an action to foreclose such lien, file a bond with the clerk of the district court in the county in which such property is situated, or, if such property is situated in more than one county, with the clerk of the district court of any county in which a part of such property is situated. Such bond shall be in an amount one and one-half ($1\frac{1}{2}$) times the amount of the said lien, and shall be either in cash or written by a corporate surety company. If written by a corporate surety, such bond shall be approved by a judge of the district court with which such bond is filed. The bond shall be conditioned that if the lien claimant shall be finally adjudged to be entitled to recover upon the claim upon which his lien is based, the principal or his sureties shall pay to such claimant the amount of his judgment, together with any interest, costs, attorney fees, and other sums which such claimant would be entitled to recover upon the foreclosure of a lien against the principal.

History: En. Sec. 1, Ch. 338, L. 1971.

Title of Act

An act providing that the owner of real property against which a mechanics' lien has been filed may substitute a bond for the security of the lien and that said real property shall then be released from the

effect of such lien, together with any improvements thereon, and providing, in such instance, that the lien claimant shall have an action upon the bond rather than an action to foreclose a lien, and providing that the statute of limitations for foreclosure of a mechanics' lien shall apply to an action upon such bond.

45-514. Lien discharged upon filing of bond. Upon the filing of a bond as provided in section 1 [45-513] of this act, the lien against the said real property shall forthwith be discharged and released in full and the said bond shall be substituted for such lien.

History: En. Sec. 2, Ch. 338, L. 1971.

45-515. Action upon bond—period of limitation same. When a bond is filed as provided in section 1 [45-513] of this act, the person filing such lien may bring an action upon the said bond. Such action shall be commenced within the time allowed for the commencement of an action upon foreclosure of a lien, and the statute of limitations applicable to a lien foreclosure shall apply to an action upon such bond as it would had no bond been filed.

History: En. Sec. 3, Ch. 338, L. 1971.

CHAPTER 6—LIENS FOR SALARIES AND WAGES

Section 45-603. Priority of wages in case of death of employer.

45-603. (8353) Priority of wages in case of death of employer. In case of the death of any employer, the wages of each miner, mechanic, salesperson, clerk, servant, and laborer for services rendered within four (4) months next preceding the death of the employer, in the amount actually owed, are preferred debts under section 91A-3-805(1)(e) and must be paid before other claims against the estate of the deceased person.

History: En. Sec. 2051, 5th Div. Comp. Stat. 1887; re-en. Sec. 2151, C. Civ. Proc. 1895; re-en. Sec. 7303, Rev. C. 1907; re-en. Sec. 8353, R. C. M. 1921; amd. Sec. 2, Ch. 109, L. 1943; amd. Sec. 3, Ch. 263, L. 1975; amd. Sec. 25, Ch. 535, L. 1975. Cal. C. Civ. Proc. Sec. 1205.

Compiler's Notes

This section was amended twice in 1975, once by Ch. 263 and once by Ch. 535. Neither amendatory act mentioned or included the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a

composite section embodying the changes made by both amendments.

Amendments

Chapter 263, Laws of 1975, substituted "are preferred debts under section 91A-3-805(1)(e)" for "rank in priority next after the funeral expenses, expenses of the last sickness, the charges and expenses of administering upon the estate, and the allowance to the widow and infant children."

Chapter 535, Laws of 1975, substituted "salesperson" for "salesman" and "surviving spouse" for "widow."

CHAPTER 7—CROP LIENS FOR SEED, GRAIN AND HAIL INSURANCE

Section 45-704. Acknowledgment of satisfaction of lien.

45-707. Satisfaction of lien.

45-704. (8362) Acknowledgment of satisfaction of lien. Whenever the indebtedness which is a lien upon such grain or other crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction thereof, and to discharge the said lien of record; and if any lienor fails to acknowledge satisfaction and discharge of said lien as aforesaid, within thirty (30) days after being requested to do so by a person having a property interest in such grain or other crops, he is liable to any person injured thereby in the amount of such injury and the costs of the action. [Effective January 1, 1965.]

History: En. Sec. 4, Ch. 15, Ex. L. 1918; re-en. Sec. 8362, R. C. M. 1921; amd. Sec. 11-123, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted "as in the case of a chattel mortgage" after "ac-

knowledge satisfaction thereof" in the first part of the section; and inserted "within thirty (30) days after being requested to do so by a person having a property interest in such grain or other crops" in the latter part of the section.

45-707. (8365) Satisfaction of lien. Whenever the indebtedness, which is a lien upon such grain or other crops, is paid or satisfied on or before November 1 of the then current year, it is the duty of the lienor to acknowledge satisfaction thereof within twenty days after receiving payment, and to discharge the said lien of record, and if any lienor fails to acknowledge satisfaction and discharge of said lien as aforesaid he is liable to any person injured thereby in the amount of such injury and the costs of action. If any hail lien is not satisfied on or before the first day of

March of the next succeeding year after the insurance was carried on the crop, the same shall be deemed satisfied and released of record. [Effective January 1, 1965.]

History: En. Sec. 3, Ch. 223, L. 1921; re-en. Sec. 8365, R. C. M. 1921; amd. Sec. 11-124, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted "as in the case of a chattel mortgage" after "acknowledgment satisfaction thereof" in the first part of the first sentence.

CHAPTER 8—THRESHERMEN'S LIENS

- Section 45-801. Liens of threshermen, swathers and owners of combine harvester and thresher upon grain or crops.
 45-802. Claim of lien, when, where and how filed, service of notice.
 45-808. Owner defined.
 45-809. Acknowledgment of satisfaction of lien—penalty.

45-801. (8366) Liens of threshermen, swathers and owners of combine harvester and thresher upon grain or crops. All threshermen or swathers owning or operating threshing or swathing machines, and all owners of combine harvesters and threshers, shall have a lien upon the grain and other crops swathed or threshed by said threshing or swathing machine or cut and threshed by said combine harvester and thresher, for and on account of the services rendered and the labor performed by them on said grain and crops, and which lien may be claimed by the owner of said grain for the reasonable value of such services, if same are performed by him. Liens on grain and other crops shall be charged for at the prevailing price for that particular locality in which such grain or other crop is threshed, harvested or combined; and, provided, notices are given and lien is filed within the time provided by this act.

If the prevailing price for threshing, harvesting or combining grain or other crop is disputed by the thresherman or swather and the owner of the grain or other crop, the matter may be submitted to arbitration under the provisions of chapter 201, Title 93.

History: En. Sec. 1, Ch. 25, L. 1915; re-en. Sec. 8366, R. C. M. 1921; amd. Sec. 1, Ch. 20, L. 1929; amd. Sec. 1, Ch. 112, L. 1931; amd. Sec. 1, Ch. 124, L. 1933; amd. Sec. 1, Ch. 308, L. 1973.

Amendments

The 1973 amendment inserted the refer-

ences to swathing and swathers in the first sentence of the first paragraph; deleted from the first paragraph provisions limiting the lien to 7¢ per bushel for threshing most grains and to \$1.50 per acre for combining most grains; added the second paragraph; and made minor changes in style.

45-802. (8367) Claim of lien, when, where and how filed, service of notice. Every person intending to avail himself of the benefits of this act must file with the county clerk of the county in which said grain or other crops were grown, within ten days after the last service was rendered or labor performed in the threshing of said grain or other crops, or the cutting and harvesting and threshing by said combined harvester and thresher, a notice that within twenty days a lien, as specified in section 45-801, will be claimed, and within twenty days thereafter shall file with the county clerk and recorder of the county in which said grain or other crops were grown, a just and true account of the

amount due him or them for such services or labor after allowing all just credits and offsets and containing a correct description of the grain or other crops to be charged with such lien, the price agreed upon for such threshing or cutting and harvesting, the name of the person, firm or corporation for whom such labor and services were performed, and a description of the lands as nearly as possible, upon which said grain or other crops were raised, and a description of the legal subdivision of land upon which said grain is stored, and if said grain is stored in an elevator, the locality of the said elevator, which statements of facts shall be verified by affidavit of the person claiming such lien, or his duly authorized agent or attorney, having knowledge of the facts; but any error or mistake in the account or description of the grain or other crops or of the property upon which it was raised, shall not invalidate such said lien.

If the grain or other crops so threshed, cut, harvested and threshed are being hauled from the machine or combine direct to the elevator or to any other purchaser, then the threshermen or owner of the combine desiring to claim such lien shall also serve written notices upon the elevatorman or other private purchaser, that he will claim and file a lien upon said grain or other crops for his services or labor performed in threshing, or combining and threshing the same.

History: En. Sec. 2, Ch. 25, L. 1915; amd. Sec. 1, Ch. 162, L. 1917; amd. Sec. 1, Ch. 71, L. 1921; re-en. Sec. 8367, R. C. M. 1921; amd. Sec. 2, Ch. 20, L. 1929; amd. Sec. 2, Ch. 112, L. 1931; amd. Sec. 2, Ch. 308, L. 1973.

Amendments

The 1973 amendment substituted "as specified in section 45-801" for "of not to

exceed twelve cents per bushel for grain threshed or not to exceed two dollars per acre for grains harvested and threshed with a combined harvester and thresher, except flax, clover seed, alfalfa seed, or other grass seeds, which shall be charged for at the prevailing price for that particular locality in which such grain or seed is threshed or combined" in the first paragraph.

45-808. (8373) Owner defined. Every person, including guardians or minors, married persons, and any company, firm, association, or corporation for whose use or benefit the grain or other crops mentioned herein are threshed, or the services rendered or labor performed, is deemed the owner thereof for the purposes herein mentioned.

History: En. Sec. 8, Ch. 25, L. 1915; re-en. Sec. 8373, R. C. M. 1921; amd. Sec. 26, Ch. 535, L. 1975.

Amendments

The 1975 amendment substituted "married persons" for "married women."

45-809. (8374) Acknowledgment of satisfaction of lien—penalty. Whenever the indebtedness which is a lien upon any such grain or other crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction thereof, and to discharge the said lien of record; and if any lienor fails to acknowledge satisfaction and discharge said lien as aforesaid, within thirty (30) days after being requested to do so by a person having a property interest in such grain or other crops, he is liable to any person injured thereby in the amount of such injury and the costs of action. [Effective January 1, 1965.]

History: En. Sec. 9, Ch. 25, L. 1915; re-en. Sec. 8374, R. C. M. 1921; amd. Sec. 11-125, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted "as in the case of a mortgage" after "acknowl-

edge satisfaction thereof" in the first part of the section; and inserted "within thirty (30) days after being requested to do so by a person having a property interest in such grain or other crops" in the latter part of the section.

CHAPTER 9—FARM LABORERS' LIENS

Section 45-911. Acknowledgment of satisfaction of lien—penalty.

45-911. (8374.11) Acknowledgment of satisfaction of lien—penalty. Whenever the indebtedness which is a lien upon any of such crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction thereof, and to discharge the said lien of record, and if any lienor fails to acknowledge satisfaction and discharge said lien as aforesaid, within thirty (30) days after being requested to do so by a person having a property interest in such crops, he is liable to any person injured thereby in the amount of such injury and costs of action. [Effective January 1, 1965.]

History: En. Sec. 11, Ch. 196, L. 1935; amd. Sec. 11-126, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted "as in the case of a chattel mortgage" after "acknowledge satisfaction thereof" in the first

part of the section; inserted "within thirty (30) days after being requested to do so by a person having a property interest in such crops" in the latter part of the section; and made a minor change in punctuation.

CHAPTER 10—LABORERS' AND MATERIALMEN'S LIENS ON OIL AND GAS WELLS AND PIPELINES

Section 45-1003. Manner of enforcing liens—duty of county clerks.

45-1004.1. How lien perfected.

45-1004.2. Date lien arises—preference over other liens—parity of liens.

45-1004.3. Priority of lien over mortgage or other liens.

45-1003. (8377) Manner of enforcing liens—duty of county clerks. The liens herein created shall be enforced in the same manner and the duty of county clerks with respect to the filing and abstracting of liens shall be the same as now provided by the laws of Montana for materialmen's and mechanic's liens.

History: En. Sec. 3, Ch. 45, L. 1917; re-en. Sec. 8377, R. C. M. 1921; amd. Sec. 2, Ch. 152, L. 1923; amd. Sec. 3, Ch. 143, L. 1957; amd. Sec. 1, Ch. 193, L. 1963; amd. Sec. 1, Ch. 170, L. 1973.

Amendments

The 1963 amendment inserted "arise, be perfected, have the same priority and" before "be enforced" near the beginning of the section; and, at the end of the section, added "with the following exceptions: (1) The statement of lien shall be filed with the county clerk of the county in which any part of such land,

leasehold, or pipeline is situated. (2) Such statement must be filed within six (6) months after the date upon which said material or services were last furnished or labor last performed under the contract."

The 1973 amendment deleted all the language inserted or added by the 1963 amendment and restored the section as found in the parent volume.

Repealing Clause

Section 2 of Ch. 193, Laws 1963 read "Sections 45-1004, 45-1005 and 45-1006, R. C. M. 1947, are hereby repealed."

45-1004. Repealed.**Repeal**

Section 45-1004 (Sec. 4, Ch. 143, L. 1957), relating to the perfection of oil

and gas well and pipeline liens, was repealed by Sec. 2, Ch. 193, Laws 1963. For present law, see sec. 45-1004.1.

45-1004.1. How lien perfected. Every person, corporation or co-partnership claiming a lien under this chapter shall file with the county clerk of the county in which such land, leasehold, or pipeline, or some part thereof, is situated, a statement verified by affidavit setting forth the amount claimed and the items thereof, the dates on which labor was performed or material or services furnished, the name of the owner of the leasehold or pipeline, if known, the name of the claimant and his mailing address, a description of the leasehold or pipeline, and if the claimant be a claimant under section 45-1002, the name of the person for whom the labor was immediately performed or the material or services were immediately furnished. Such statement must be filed within six (6) months after the date upon which said material or services were last furnished or labor last performed under contract as aforementioned.

History: En. 45-1004.1 by Sec. 2, Ch. 170, L. 1973.

Title of Act

An act amending section 45-1003, R. C. M. 1947, relating to liens for labor and material furnished for use of oil or gas wells or pipelines by deleting any reference to perfecting, priority, and method of filing such liens; providing how such liens

are perfected; providing for the date such liens shall arise; providing for the preference of such lien over certain other liens; providing that all liens affixed by virtue of chapter 10 of Title 45, R. C. M. 1947, upon the same property shall be of equal standing; and providing for the priority of such lien over mortgage or other liens.

45-1004.2. Date lien arises—preference over other liens—parity of liens. The lien provided for in this chapter arises on the date of the furnishing of the first item of material or services or the date of performance of the first labor. Upon compliance with the provisions of section 45-1004.1, such lien shall be preferred to all other titles, charges, liens or encumbrances which may attach to or upon any of the property upon which a lien is given by this chapter subsequent to the date the lien herein provided for arises. All liens affixed by virtue of this chapter upon the same property shall be of equal standing.

History: En. 45-1004.2 by Sec. 3, Ch. 170, L. 1973.

45-1004.3. Priority of lien over mortgage or other liens. The lien herein provided for shall have no priority over other liens, encumbrances or mortgages which are filed or recorded prior to the date of the furnishing of the first item of material or services or the date of performance of the first labor.

History: En. 45-1004.3 by Sec. 4, Ch. 170, L. 1973.

45-1005, 45-1006. Repealed.**Repeal**

Sections 45-1005, 45-1006 (Secs. 5 and 6, Ch. 143, L. 1957), relating to the priority of oil and gas well and pipeline

liens, were repealed by Sec. 2, Ch. 193, Laws 1963. For present law, see secs. 45-1004.2 and 45-1004.3.

CHAPTER 11—MISCELLANEOUS LIENS

- Section 45-1106. Agisters' liens and liens for service—priority.
 45-1107. Secured party may take possession of property.

45-1104. (8381) Repealed.

Repeal

This section (Sec. 3933, Civ. C. 1895), relating to liens of sellers of personal

property, was repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

45-1106. (8383) Agisters' liens and liens for service—priority. Every person who, while lawfully in possession of an article of personal property, renders any service to the owner or lawful claimant thereof by labor or skill employed for the making, repairing, protection, improvement, safe-keeping, or carriage thereof, has a special lien thereon, dependent on possession, for the compensation, if any, which is due to him from the owner or lawful claimant for such service and for material, if any, furnished in connection therewith. A ranchman, farmer, agister, herder, hotel-keeper, livery, boarding, or feed stable-keeper, to whom any horses, mules, cattle, sheep, hogs, or other stock are entrusted, and there is a contract, express or implied, for their keeping, feeding, herding, pasturing, or ranching, has a lien upon such stock for the amount due for keeping, feeding, herding, pasturing, or ranching the same, and is authorized to retain possession thereof until the sum due is paid. The lien hereby created shall not take precedence over perfected security interests under the Uniform Commercial Code—Secured Transactions, or other recorded liens on the property involved, unless within ten days from the time of receiving the property, the person desiring to assert a lien thereon shall give notice in writing to said secured party or other lien holder, stating his intention to assert a lien on said property, under the terms of this act, and stating the nature and approximate amount of the work, or feed, performed or furnished or intended to be performed or furnished therefor.

Such service may be made either by personal service or by mailing by registered mail a copy of said notice to the secured party or other lien holder at his last known post-office address. Said service shall be deemed complete upon the deposit of the notice in the post office. [Effective January 1, 1965.]

History: Similar early acts were Sec. 1, p. 331, Bannack Stat.; re-en. Sec. 29, p. 514, Cod. Stat. 1871; re-en. Sec. 848, 5th Div. Rev. Stat. 1879; re-en. Sec. 1394, 5th Div. Comp. Stat. 1887; amd. Sec. 3935, Civ. C. 1895.

En. Sec. 3935, Civ. C. 1895; re-en. Sec. 5805, Rev. C. 1907; amd. Sec. 1, Ch. 117, L. 1921; re-en. Sec. 8383, R. C. M. 1921; amd. Sec. 11-127, Ch. 264, L. 1963. Cal. Civ. C. Sec. 3051. First paragraph based on Field Civ. C. Sec. 1696.

Amendment

The 1963 amendment substituted "perfected security interests under the Uniform Commercial Code — Secured Transactions" in the first part of the third sentence in the first paragraph for "the

lien of prior chattel mortgages"; and substituted "secured party" for "mortgagee" in the third sentence in the first paragraph and in the first sentence in the second paragraph.

Other Recorded Liens

The term "other recorded liens" includes conditional sales contracts. *Williamson v. Skerritt*, 141 M 422, 378 P 2d 215.

Notice to Secured Party

Automobile repairman's asserted agister's lien did not have priority over bank's security interest where person authorizing repairs was not registered owner or agent of owner and notice of lien was not given to bank within ten days of receipt of vehicle for repair; failure to file copy of

lien with registrar of motor vehicles as required by 53-110(a) also rendered the asserted agister's lien invalid; repossession

of vehicle on behalf of bank did not, under these circumstances, constitute conversion. *Parker v. West*, — M —, 505 P 2d 94.

45-1107. (8384) Secured party may take possession of property
Within ten days after the date of such mailing, or five days after such personal service, the secured party or other lien holder, or his representative, shall have the right to take possession of said property upon payment of the amount of the lien then accrued. A failure on the part of such secured party or other lien holder so to do shall constitute a waiver of the priority of such security interest or other lien over the lien created by this act. [Effective January 1, 1965.]

History: En. Sec. 2, Ch. 117, L. 1921; re-en. Sec. 8384, R. C. M. 1921; amd. Sec. 11-128, Ch. 264, L. 1963. Cal. Civ. C. Sec. 3052.

cured party" for "mortgagee" in two places; substituted "security interest" for "chattel mortgage" in the second sentence; and added "over the lien created by this act" at the end of the section.

Amendment

The 1963 amendment substituted "se-

CHAPTER 12—LIENS OF PHYSICIANS, NURSES AND HOSPITALS IN PERSONAL INJURY CLAIMS

45-1203. (8395.3) Same—when filed with clerk of court.

Notice to Attorneys of Record

Attorneys of record in a personal injury action are chargeable as agents for their clients with notice and knowledge imparted to their client by filing of

notice of a hospital lien in the action *Sisters of Charity of Providence of Montana v. Nichols*, 157 M 106, 483 P 2d 279.

CHAPTER 13—STOPPAGE IN TRANSIT

(Repealed—Section 10-102, Chapter 264, Laws of 1963)

45-1301 to 45-1305. (8396 to 8400) Repealed.

Repeal

These sections (Secs. 3970 to 3974, Civ. C. 1895; Secs. 5837 to 5841, Rev. C. 1907; Secs. 8396 to 8400, R. C. M. 1921), relating

to stoppage in transit, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

CHAPTER 14—CROP OR GRAIN LIEN FOR DUSTING OR SPRAYING

Section 45-1410. Acknowledgment of satisfaction and discharge of lien—penalty for failure.

45-1410. Acknowledgment of satisfaction and discharge of lien—penalty for failure. Whenever the indebtedness which is a lien upon any such grain or crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction thereof, and to discharge the said lien of record; and if any lienor fails to acknowledge satisfaction and discharge said lien as aforesaid, within thirty (30) days after being requested to do so by a person having a property interest in such grain or crops, he is liable to any person injured thereby in the amount of such injury and the costs of action. [Effective January 1, 1965.]

History: En. Sec. 10, Ch. 205, L. 1953; amd. Sec. 11-129, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted "as in the case of a mortgage" after "acknowledge

satisfaction thereof" in the first part of the section; and inserted "within thirty (30) days after being requested to do so by a person having a property interest in such grain or crops" in the latter part of the section.

CHAPTER 15—FEDERAL TAX LIEN

- Section 45-1501. Federal tax lien—place of filing.
 45-1502. Execution of notices and certificates.
 45-1503. Duties of filing officer.
 45-1504. Fees.
 45-1505. Uniformity of interpretation.
 45-1506. Short title.
 45-1507. Tax liens and notices filed before effective date of this act.

45-1501. Federal tax lien—place of filing. (a) Notices of liens upon real property for taxes payable to the United States, and certificates and notices affecting the liens shall be filed in the office of the clerk and recorder of the county or counties in which the real property subject to a federal tax lien is situated.

(b) Notices of liens upon personal property, whether tangible or intangible, for taxes payable to the United States and certificates and notices affecting the liens shall be filed as follows:

(1) if the person against whose interest the tax lien applies is a corporation or a partnership whose principal executive office is in this state, as these entities are defined in the internal revenue laws of the United States, in the office of the secretary of state;

(2) in all other cases in the office of the clerk and recorder of the county where the taxpayer resides at the time of filing of the notice of lien.

History: En. Sec. 1, Ch. 228, L. 1967.

Carolina, South Dakota, Tennessee, Utah, Virginia, Wisconsin and Wyoming.

NOTE.—The following states have enacted the Uniform Federal Tax Lien Registration Act: Alaska, Arkansas, California, Colorado, Connecticut, Delaware, Hawaii, Idaho, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, South

Title of Act

An act to revise the Uniform Federal Tax Lien Registration Act, authorizing the filing of notices of liens for taxes payable to the United States of America and of certificates discharging such liens, and to make uniform the law with reference thereto; repealing sections 84-3901, 84-3902, 84-3903, 84-3904, 84-3905, 84-3906, 84-3907, R. C. M. 1947.

45-1502. Execution of notices and certificates. Certification by the secretary of the treasury of the United States or his delegate of notices of liens, certificates, or other notices affecting tax liens entitles them to be filed and no other attestation, certification, or acknowledgment is necessary.

History: En. Sec. 2, Ch. 228, L. 1967.

45-1503. Duties of filing officer. (a) If a notice of federal tax lien, a refiling of a notice of tax lien, or a notice of revocation of any

certificate described in subsection (b) is presented to the filing officer, and

(1) he is the secretary of state, he shall cause the notice to be marked, held and indexed in accordance with the provisions of subsection (4) of section 87A-9-403, Revised Codes of Montana 1947, as if the notice were a financing statement within the meaning of that code; or

(2) he is any other officer described in section 1 [45-1501] of this act, he shall endorse thereon his identification and the date and time of receipt and forthwith file it alphabetically or enter it in an alphabetical index showing the name and address of the person named in the notice, the date and time of receipt, the serial number of the district director and the total unpaid balance of the assessment appearing on the notice of lien.

(b) If a certificate of release, nonattachment, discharge or subordination of any tax lien is presented to the secretary of state for filing he shall

(1) cause a certificate of release or nonattachment to be marked, held and indexed as if the certificate were a termination statement within the meaning of the uniform commercial code, except that the notice of lien to which the certificate relates shall not be removed from the files, and

(2) cause a certificate of discharge or subordination to be held, marked and indexed as if the certificate were a release of collateral within the meaning of the uniform commercial code.

(c) If a refiled notice of federal tax lien referred to in subsection (a) or any of the certificates or notices referred to in subsection (b) is presented for filing with any other filing officer specified in section 1 [45-1501], he shall permanently attach the refiled notice or the certificate to the original notice of lien and shall enter the refiled notice or the certificate with the date of filing in any alphabetical federal tax lien index on the line where the original notice of lien is entered.

(d) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file, on the date and hour stated therein, any notice of federal tax lien or certificate or notice affecting the lien, filed on or after July 1, 1967, naming a particular person, and if a notice or certificate is on file, giving the date and hour of filing of each notice or certificate. The fee for a certificate is two dollars (\$2). Upon request the filing officer shall furnish a copy of any notice of federal tax lien or notice or certificate affecting a federal tax lien for a fee of one dollar (\$1) per page.

History: En. Sec. 3, Ch. 228, L. 1967.

45-1504. Fees. The fee for filing and indexing each notice of lien or certificate or notice affecting the tax lien is:

(1) for a tax lien on real estate, two dollars (\$2).

(2) for a tax lien on tangible and intangible personal property, two dollars (\$2).

(3) for a certificate of discharge or subordination, one dollar (\$1).

(4) for all other notices, including a certificate of release or non-attachment, two dollars (\$2). The officer shall bill the district directors of internal revenue on a monthly basis for fees for documents filed by them.

History: En. Sec. 4, Ch. 228, L. 1967.

45-1505. Uniformity of interpretation. This act shall be so construed as to effectuate its general purpose to make uniform the laws of those states which enact it.

History: En. Sec. 5, Ch. 228, L. 1967.

45-1506. Short title. This act may be cited as the Revised Uniform Federal Tax Lien Registration Act.

History: En. Sec. 6, Ch. 228, L. 1967.

45-1507. Tax liens and notices filed before effective date of this act. Filing officers with whom notices of federal tax liens, certificates and notices affecting such liens have been filed on or before July 1, 1967, shall, after that date, continue to maintain a file labeled "federal tax lien notices filed prior to July 1, 1967," containing notices and certificates filed in numerical order of receipt. If a notice of lien was filed on or before July 1, 1967, any certificate or notice affecting the lien shall be filed in the same office.

History: En. Sec. 9, Ch. 228, L. 1967.

Separability Clause

Section 7 of Ch. 228, Laws 1967 read "Severability. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision

or application and to this end the provisions of the act are severable."

Repealing Clause

Section 8 of Ch. 228, Laws 1967 read "Repeal of prior acts. Sections 84-3901, 84-3902, 84-3903, 84-3904, 84-3905, 84-3906 and 84-3907, R. C. M. 1947, and all other acts or parts of acts in conflict herewith are hereby repealed."

TITLE 46—LIVESTOCK

- Chapter 1. Livestock industry—department of livestock—duties and powers, 46-103.1, 46-104, 46-105, 46-105.1.
2. Administrator—federal veterinary inspectors—quarantine inspection and destruction of diseased stock—licensing dairies, milk plants and slaughterhouses, 46-202 to 46-204, 46-206 to 46-209.1, 46-210.1 to 46-214, 46-216 to 46-222, 46-224, 46-226 to 46-236, 46-238 to 46-240, 46-247, 46-248.
3. Tuberculin regulation, sale and distribution, 46-301, 46-302.
4. Montana meat inspection law, Repealed—Section 201, Chapter 310, Laws of 1974.
5. Butchers' and meat peddlers' licenses—duty as to hides of slaughtered cattle, 46-501, 46-503, 46-506.
6. Recording of marks and brands, 46-601, 46-603 to 46-607, 46-609.
7. Inspectors and detectives, 46-701, 46-703 to 46-709.
8. Inspection of livestock before sale, removal or shipment, 46-801.1 to 46-801.5, 46-802 to 46-804, 46-806, 46-808 to 46-813.
9. Livestock markets—inspection and quarantine—license and bonding, 46-902, 46-903, 46-906 to 46-909.1, 46-911 to 46-918.1, 46-920, 46-921.
10. Estrays—disposal of, 46-1001 to 46-1006, 46-1008, 46-1011, 46-1012.
11. Hides of slaughtered cattle—regulation—hide dealers' licenses, 46-1101.1, 46-1101.2, 46-1103, 46-1104, 46-1107, 46-1107.1, 46-1114.
14. Legal fences—liability of owners for trespassing stock, 46-1406, 46-1409 to 46-1411, 46-1413.
15. Herd districts, 46-1501.
17. Animals running at large, 46-1701, 46-1708, 46-1717.
18. Roundup and sale of abandoned horses, 46-1801, 46-1802, 46-1804.
19. Bounties for killing wild animals—killing dogs injuring livestock, 46-1901 to 46-1904, 46-1907 to 46-1909, 46-1912, 46-1914, 46-1915.
20. Impounding livestock or domestic animals, 46-2004, 46-2007.
21. Sheep—protection from predatory animals—tax, 46-2102, 46-2104.
23. Grass conservation—grazing districts, 46-2301, 46-2302, 46-2307 to 46-2318, 46-2322, 46-2323, 46-2325, 46-2331, 46-2332.
24. Rendering or disposal plants—licensing—regulation, 46-2401 to 46-2409, 46-2411, 46-2412.
25. Artificial insemination of animals and poultry, 46-2505, 46-2515.
26. Regulation of industry treating or feeding garbage to swine and other animals, 46-2602 to 46-2610.
27. County livestock protective committees, 46-2703 to 46-2706.
28. Cattle protective districts, 46-2801 to 46-2810.
29. Livestock dealers, 46-2901 to 46-2907.
30. Unlawful driving of livestock, 46-3001, 46-3006, 46-3007.
31. Pork Research and Marketing Act, 46-3101 to 46-3113.

CHAPTER 1—LIVESTOCK INDUSTRY—DEPARTMENT OF LIVESTOCK—DUTIES AND POWERS

Section 46-103.1. Definitions.

46-104. Duties and powers of department.

46-105. Audit of bills—payment of expenses.

46-105.1. Investment of earmarked revenue account funds—crediting of investment income.

46-101 to 46-103. (3253 to 3255) Repealed.

Repeal

Sections 46-101 to 46-103 (Secs. 1 to 3, Ch. 51, L. 1917), relating to the appointment and compensation of members, and

the organization of, the livestock commission, were repealed by Sec. 201, Ch. 310, Laws of 1974.

46-103.1. **Definitions.** Unless the context requires otherwise, in Title 46:

(1) "Board" means the board of livestock provided for in section 82A-1303;

(2) "Department" means the department of livestock provided for in Title 82A, chapter 13.

History: En. 46-103.1 by Sec. 48, Ch. 310, L. 1974.

Title of Act

An act for revision of the laws relating to the department of livestock.

46-104. Duties and powers of department. The department shall exercise general supervision over and, so far as possible, protect the livestock interests of the state from theft and disease and recommend legislation which, in the judgment of the department, fosters this industry. The department may compel the attendance of witnesses, employ counsel to assist in the prosecution of violations of laws made for the protection of the livestock interests, and assist in the prosecution of persons charged with illegal branding or theft of livestock or any other crime under the laws of this state for the protection of stock owners. It may adopt rules governing the recording and use of livestock brands.

History: En. Sec. 4, Ch. 51, L. 1917; re-en. Sec. 3256, R. C. M. 1921; amd. Sec. 49, Ch. 310, L. 1974; amd. Sec. 52, Ch. 359, L. 1977.

The 1977 amendment substituted "illegal branding or theft of livestock" in the second sentence for "feloniously branding or stealing livestock"; and made minor changes in punctuation.

Amendments

The 1974 amendment substituted references to "department" throughout the section for references to "livestock commission" and "commission"; substituted "It may adopt rules" for "It shall also have power to make rules and regulations" at the beginning of the last sentence; and made minor changes in phraseology.

Livestock Markets

In the regulation of livestock markets under section 46-907 the livestock commission has the power to determine whether or not a showing of convenience and necessity has been made. Application of Baker Sales Barn, Inc., 140 M 1, 367 P 2d 775, 780, 781. (Dissenting opinions 140 M 1, 367 P 2d 775, 783, 784.)

46-105. Audit of bills—payment of expenses. The department shall audit all bills for expenses incurred by it in the discharge of its duties, which shall be paid out of the department's moneys in the earmarked revenue fund.

History: En. Sec. 5, Ch. 51, L. 1917; re-en. Sec. 3257, R. C. M. 1921; amd. Sec. 88, Ch. 147, L. 1963; amd. Sec. 50, Ch. 310, L. 1974.

Amendments

The 1963 amendment substituted "which shall be paid out of the livestock commission moneys in the earmarked revenue fund" at the end of the section for "and when found correct, to certify the same to the state auditor, who shall thereupon draw a warrant upon the state treasurer in favor of the party or parties entitled thereto for the amount so certified,

which warrants shall be drawn upon and paid out of the livestock commission fund. which said fund shall be created by placing to its credit the amounts heretofore directed to be placed to the credit of the sheep inspection and indemnity fund and the stock inspection and detective fund by section 84-5212, and other funds hereafter appropriated for the support and maintenance of the said commission."

The 1974 amendment substituted "department" and "department's" for "livestock commission"; and made a minor change in phraseology.

46-105.1. Investment of earmarked revenue account funds—crediting of investment income. The board may direct the board of investments to invest funds from the earmarked revenue accounts of the department pursuant to the provisions of the unified investment program for state funds. The income from such investments shall be credited to the earmarked account of the department from which the investment is made.

History: En. 46-105.1 by Sec. 1, Ch. 16, L. 1977.

Title of Act

An act permitting the investment of the funds of certain earmarked accounts of the departments of livestock and ag-

riculture; directing that the income from such investments be credited to the account from which the investment is made; and generally clarifying language; amending sections 3-2917, 3-233, 3-2033, and 82-1507, R. C. M. 1947.

46-106. (3258) Repealed.

Repeal

Section 46-106 (Sec. 6, Ch. 51, L. 1917), relating to the annual report of the com-

mission, was repealed by Sec. 44, Ch. 93, Laws 1969. For present law, see secs. 82-4001 and 82-4002.

46-107. (3259) Repealed.

Repeal

Section 46-107 (Sec. 7, Ch. 51, L. 1917), relating to the repeal of sections relating to the board of stock commissioners and

board of sheep commissioners and transfer of powers, was repealed by Sec. 201, Ch. 310, Laws of 1974.

**CHAPTER 2—ADMINISTRATOR—FEDERAL VETERINARY INSPECTORS
—QUARANTINE INSPECTION AND DESTRUCTION OF DISEASED
STOCK—LICENSING DAIRIES, MILK PLANTS AND
SLAUGHTERHOUSES**

- Section 46-202. Verification and approval of claims.
- 46-203. Administrator—appointment and qualifications.
- 46-204. Administrator—duties.
- 46-206. Appointment of federal veterinary inspectors.
- 46-207. Authority of department and agents.
- 46-208. Powers of department.
- 46-209. Poultry industry—powers and authority of department.
- 46-209.1. Administrator's expertise to be considered.
- 46-210.1. Injunctive remedies.
- 46-211. Adoption of rules.
- 46-212. Establishment of livestock disease control area—entry into area—compulsory inspection area, when.
- 46-213. Duty of county assessor.
- 46-214. Owner guilty of misdemeanor, when.
- 46-216. Sale of carcasses unsanitarily slaughtered or handled.
- 46-217. Authority of municipal corporations.
- 46-218. Classification of animals as to compensation for slaughter.
- 46-219. Payment for other personal property.
- 46-220. Indemnity—from what funds paid.
- 46-221. Presentation of claims for indemnity.
- 46-222. Indemnity for class 2 animals in state less than one hundred and twenty (120) days.
- 46-224. Examination and payment of claims.
- 46-226. Sale of condemned carcasses—disposal of proceeds.
- 46-227. Rules—agreement with federal government.
- 46-228. Persons entitled to indemnity.
- 46-229. Compensation from federal government or other agency.
- 46-230. Expenses, how paid—lien and foreclosure.
- 46-231. Expense of cleaning and disinfecting carriers' facilities.

- 46-232. Licensing of milk plants and dairies selling milk or cream for public consumption.
- 46-233. Exceptions of certain producers of meats and dairy products.
- 46-234. Cooperation by public officers.
- 46-235. Slaughterhouse license—fees and renewals.
- 46-236. Duty to report contagious diseases.
- 46-238. Penalty for violation.
- 46-239. Civil liability.
- 46-239.1. Feedlot defined.
- 46-239.2. Dead animals in feedlots—inspection required.
- 46-239.3. Penalty.
- 46-240. Power of department concerning oaths and witnesses.
- 46-247. Sale of diseased carcasses without inspection forbidden.
- 46-248. Penalty.

46-201. (3260) Repealed.

Repeal

Section 46-201 (Sec. 1, Ch. 262, L. 1921), relating to creation of the livestock

sanitary board, was repealed by Sec. 201, Ch. 310, Laws of 1974.

46-202. Verification and approval of claims. All claims against the department of livestock must be verified by oath of the claimant, or his agent with knowledge of the facts.

History: En. Sec. 2, Ch. 262, L. 1921; re-en. Sec. 3261, R. C. M. 1921; amd. Sec. 20, Ch. 97, L. 1961; amd. Sec. 51, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "department of livestock" for "board" and inserted "the" before "claimant."

46-203. Administrator — appointment and qualifications. (1) The board shall appoint a person to be directly responsible to it for the administration of the laws relating to animal health.

(2) He must have a doctor of veterinary medicine degree from an accredited college or school and he must be licensed to practice veterinary medicine in this state.

History: En. Sec. 3, Ch. 262, L. 1921; re-en. Sec. 3262, R. C. M. 1921; amd. Sec. 52, Ch. 310, L. 1974.

Amendments

The 1974 amendment rewrote this section which read: "The board shall appoint a chief executive officer, who shall act

as the state veterinary surgeon. He must be a graduate of a regular and reputable veterinary college, or of the veterinary department of a regular and reputable university, and he must be licensed to practice veterinary medicine in the state of Montana."

46-204. Administrator—duties. The administrator, subject to the rules of the board, may act for and perform the duties imposed by law on the board, when the board is not in session, but any order or regulation promulgated by him shall be subject to review, modification, or annulment by the board.

History: En. Sec. 4, Ch. 262, L. 1921; re-en. Sec. 3263, R. C. M. 1921; amd. Sec. 53, Ch. 310, L. 1974.

Amendments

The 1974 amendment rewrote this section which read: "The state veterinary surgeon shall be the executive officer of the livestock sanitary board, and shall act

as its secretary; and, subject to the rules and regulations of the board, he shall have power to act for and perform the duties imposed by law on the board, when the board is not in session, but any order or regulation promulgated by him shall be subject to review, modification, or annulment by the board at its next, or any subsequent meeting."

46-205. (3264) Repealed.**Repeal**

Section 46-205 (Sec. 5, Ch. 262, L. 1921), relating to appointments by the veterinary

surgeon of inspectors and deputies, was repealed by Sec. 201, Ch. 310, Laws of 1974.

46-206. Appointment of federal veterinary inspectors. With the approval of either the federal veterinarian in charge in this state, or the United States department of agriculture, the department of livestock may appoint federal veterinarians or federal lay inspectors stationed in this state, as deputies or agents for the department. All federal officers so appointed as deputies or agents of the department possess the powers and duties of regular deputies or agents of the department but they shall act without compensation and hold office only at the pleasure of the department.

History: En. Sec. 6, Ch. 262, L. 1921; re-en. Sec. 3265, R. C. M. 1921; amd. Sec. 54, Ch. 310, L. 1974.

Amendments

The 1974 amendment deleted "By and with the consent of the livestock sanitary board" at the beginning of the section; substituted "federal veterinarian" for "fed-

eral veterinary inspector"; substituted "United States department of agriculture" for "chief of the United States bureau of animal industry"; substituted "department of livestock" for "state veterinary surgeon"; substituted "department" for "livestock sanitary board" in four places; and made minor changes in phraseology.

46-207. Authority of department and agents. In the performance of his official duties, an agent or officer of the department may enter on or in a lot, yard, land, building, room, premises, inclosure, car, wagon, boat, or other place or vehicle used for the treatment, storage, manufacture, display, or transportation of animals, meat, or dairy products, intended for sale or disposal as food. The agent or officer may enter anywhere where there may be found livestock affected with, or which has been exposed to, or which the officer has reason to believe is either affected with, or has been exposed to, an infectious, contagious, communicable, or dangerous disease, or disease-carrying insects.

History: En. Sec. 7, Ch. 262, L. 1921; re-en. Sec. 3266, R. C. M. 1921; amd. Sec. 55, Ch. 310, L. 1974.

Amendments

The 1974 amendment deleted references

to the "state veterinary surgeon"; substituted "department" for "livestock sanitary board"; and made changes in phraseology and punctuation.

46-208. (3267) Powers of department. The department may:

(1) supervise the sanitary conditions of livestock in this state, under the provisions of the constitution and statutes of this state and the rules adopted by the department. The department may quarantine a lot, yard, land, building, room, premises, inclosure, or other place or section in this state which is or may be used or occupied by livestock and which in the judgment of the department is infected or contaminated with an infectious, contagious, communicable, or dangerous disease or disease-carrying medium by which the disease may be communicated. The department may quarantine livestock in this state when the livestock is affected with or has been exposed to disease or disease-carrying medium. The department

may prescribe treatments and enforce sanitary rules which are necessary and proper to circumscribe, extirpate, control, or prevent the diseases.

(2) foster, promote, and protect the livestock industry in this state by the investigation of diseases and other subjects related to ways and means of prevention, extirpation, and control of diseases or to the care of livestock and its products and to this end may establish and maintain a laboratory, may make or cause to be made biologic products, curatives, and preventative agents, and may perform any other acts and things as may be necessary or proper in the fostering, promotion, or protection of the livestock industry in this state;

(3) impose and collect such fees as the department considers appropriate for the tests and services performed by the laboratory and for biologic products, curatives, and preventative agents made or caused to be made by the department. In fixing these fees the department shall take into consideration the costs, both direct and indirect, of the tests, services, products, curatives, and agents. All fees shall be deposited in the earmarked revenue fund for the use of the animal health functions of the department.

(4) adopt rules and orders which it considers necessary or proper to prevent the introduction or spreading of infectious, contagious, communicable, or dangerous diseases affecting livestock in this state and to this end may adopt rules and orders necessary or proper governing inspections and tests of livestock intended for importation into this state, before it may be imported into this state;

(5) adopt rules and orders which it considers necessary or proper for the inspection, testing, and quarantine of all livestock imported into this state;

(6) adopt rules and orders which it considers necessary or proper for the supervision, inspection, and control of the standards and sanitary conditions of slaughterhouses, meat depots, meat and meat food products, dairies, milk depots, milk and its by-products, barns, dairy cows, factories, and other places and premises where meat or meat foods, milk or its products, or any by-products thereof intended for sale or consumption as food are produced, kept, handled, or stored. An authorized representative of the department may take samples of a product so produced, kept, handled, or stored for analysis or testing by the department. The records of the samples and their analysis and test, when identified as to the sample by the oath of the officer taking it and verified as to the analysis or test by the oath of the chemist or bacteriologist making it, are prima facie evidence of the facts set forth in them when offered in evidence in a prosecution or action at law or in equity for violation of this chapter or a rule or order of the board adopted under this chapter. These standards, insofar as they relate to dairies or milk and its by-products, may not include standards of weight or measurement.

(7) adopt rules and orders which seem necessary or proper for the supervision and control of manufactured and refined foods for livestock and the manufacture, importation, sale, and method of using a biologic

remedy or curative agent for the treatment of diseases of livestock. However, as far as practicable the standards approved by the United States department of agriculture shall be adopted.

(8) install an adequate system of meat inspection at any time and in such places as public welfare may demand under the rules which may provide fees for the maintenance of such inspection and which shall provide ways and means for shipping home-grown and home-killed meats into any city in this state. As far as practicable, the rules shall conform with the meat-inspection requirements of the United States department of agriculture.

(9) slaughter or cause to be slaughtered any livestock in this state known to be affected with or which has been exposed to an infectious, contagious, communicable, or dangerous disease, when such slaughter is necessary for the protection of other livestock, and destroy or cause to be destroyed all barns, stables, sheds, outbuildings, fixtures, furniture, or personal property infected with any such infectious, contagious, communicable, or dangerous disease when they cannot be thoroughly cleaned and disinfected and the destruction is necessary to prevent the spreading of the disease;

(10) indemnify the owner of any property destroyed by order of the department or pursuant to any rules adopted by the department under this chapter;

(11) require persons, firms, and corporations engaged in the production or handling of meat, meat food products, dairy products, or any by-products thereof to furnish statistics of the quantity and cost of the food and food products produced or handled and the name and address of persons supplying them any of the products.

History: En. Sec. 8, Ch. 262, L. 1921; re-en. Sec. 3267, R. C. M. 1921; amd. Sec. 56, Ch. 310, L. 1974; amd. Sec. 1, Ch. 139, L. 1975; amd. Sec. 9, Ch. 12, L. 1977.

Amendments

The 1974 amendment substituted "The department may" for "The livestock sanitary board shall have the power" at the beginning of the section; deleted former subdivisions 1 and 2 pertaining to supervision of the state veterinary surgeon, deputies, inspectors, and other employees and to removal of appointees, subordinates, and employees; redesignated the subdivisions to account for the deletions; substituted references to "department" throughout the section for references to "board" and to "livestock sanitary board"; and made changes in phraseology, punctuation and style.

The 1975 amendment inserted subdivision (3); renumbered former subdivisions (3) to (10) as (4) to (11); and substituted

"department of agriculture" for "bureau of animal industry" at the end of subdivision (8).

The 1977 amendment inserted "by-products" before "thereof" in the first sentences of subdivision (6) and subdivision (11); deleted "For the purposes of this act" at the beginning of the second sentence of subdivision (6); substituted "by the department" in the second sentence of subdivision (6) for "by the department's chemist, bacteriologist, or the state chemist"; substituted "or pursuant to any rules" in subdivision (10) for "under this act, or any rules or orders"; and made minor changes in phraseology, punctuation and style.

Effective Date

Section 2 of Ch. 139, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved March 25, 1975.

46-209. Poultry industry—powers and authority of department. For the promotion and protection of the poultry industry, and to prevent, con-

trol, and exterminate infectious, contagious, dangerous and destructive diseases affecting poultry, the department shall:

(1) Supervise the sanitary condition of poultry in this state, under the provisions of the constitution and statutes of this state, and the rules adopted by the department. The department may quarantine any lot, yard, land, building, room, premises, inclosure, or other place or section in this state, which is or may be used or occupied by poultry, and which, in the judgment of the department is infected or contaminated with an infectious, contagious, communicable, or dangerous disease, or disease-carrying medium by which the disease may be communicated. The department may quarantine any poultry in this state, when the poultry is affected with, or has been exposed to, disease or disease-carrying medium. The department may prescribe treatments and enforce sanitary rules which are necessary and proper to circumscribe, extirpate, control or prevent the diseases.

(2) Foster, promote and protect the poultry industry in this state by the investigation of diseases and other subjects related to ways and means of preventing, controlling, and exterminating diseases of poultry; adopt and enforce rules for the prevention and extermination of such diseases, and perform all other acts and things as may be necessary or proper in the fostering, promotion, or protection of the poultry industry in this state.

(3) Adopt and enforce rules and orders necessary or proper to prevent the introduction or spreading of infectious, contagious, communicable or dangerous diseases affecting poultry in this state, and to this end adopt and enforce rules and orders necessary or proper governing inspections and tests of all poultry intended for importation into this state, before it may be imported into this state.

(4) Adopt and enforce rules and orders necessary or proper for the inspection, testing, and quarantine of all poultry imported into this state.

History: En. Sec. 1, Ch. 161, L. 1929; amd. Sec. 57, Ch. 310, L. 1974.

the introductory clause, and in subsection (1) for references to "livestock sanitary board," "board" and "state veterinary surgeon" and made changes in phraseology, punctuation, and style.

Amendments

The 1974 amendment substituted references to "department" in the caption, in

46-209.1. Administrator's expertise to be considered. In any action taken by the board in section 46-208 and 46-209 the board shall ask for and consider the expertise and judgment of the administrator of the laws relating to animal health.

History: En. 46-209.1 by Sec. 58, Ch. 310, L. 1974.

46-210.1. Injunctive remedies. The department may apply for and the court may grant a temporary or permanent injunction restraining any person from violating the provisions of this chapter except sections 46-239.1 through 46-239.3 or rules adopted under this chapter with the above exception, notwithstanding the existence of other remedies at law. When the application of other remedies has been insufficient to compel action to control, extirpate, or prevent the spread of disease or upon a showing that

an animal disease emergency exists and that other remedies probably would be insufficient to compel action to control the emergency, the department may apply for and the court may grant mandatory injunctive relief.

History: En. 46-210.1 by Sec. 1, Ch. 190, L. 1977.

Title of Act

An act to permit the department of

livestock to seek prohibitory or mandatory injunctive relief when necessary to fulfill its duties under animal health and livestock marketing laws.

46-211. Adoption of rules. The department shall adopt and enforce rules for the inspection and tuberculin test of dairy cattle or other animals and for the inspection, test, treatment, or disposition of livestock affected with, or which may have been exposed to, infectious, contagious, communicable, or dangerous disease and for the quarantines provided for in this chapter.

History: En. Sec. 9, Ch. 262, L. 1921; re-en. Sec. 3268, R. C. M. 1921; amd. Sec. 59, Ch. 310, L. 1974; amd. Sec. 10, Ch. 12, L. 1977.

Amendments

The 1974 amendment substituted "Adoption" for "Promulgation" in the caption

and substituted "The department shall adopt" for "It shall be the duty of the livestock sanitary board to promulgate" at the beginning of the section.

The 1977 amendment substituted "chapter" at the end of the section for "act"; and made minor changes in punctuation.

46-212. Establishment of livestock disease control area—entry into area—compulsory inspection area, when. (1) Upon receipt of a petition signed by not less than 75% of the livestock owners of the species of animals to be inspected, tested, treated, or vaccinated, representing not less than 50% of such species in any school district, as determined from the permanent records of the board of county commissioners describing school district boundaries of any county in the state of Montana, petitioning for the area control, treatment, prevention, or eradication of any dangerous disease of livestock within such school district, the board may establish such school district as a disease control area and may enforce the inspection, test, treatment, or vaccination of all livestock of the species designated within such school district in accordance with the rules promulgated by the department for the inspection, eradication, treatment, or vaccination of such livestock and may reimburse the owners of livestock slaughtered by order of the department or its authorized agent in accordance with the laws of Montana governing the payment of such animal or animals.

(2) In any circumscribed disease control area as established under this section by the department no other livestock of the species designated by the department to be inspected, tested, or vaccinated may enter the disease control area unless inspected, tested, treated, or vaccinated under the direction of the department or accompanied by a satisfactory health certificate or except under special permit and restrictions provided by the department.

(3) When 75% or more of the school districts in any county in Montana are established under this section by the department as disease control

areas, it becomes mandatory on the part of the remaining livestock owners in such county to submit their livestock of one or more species for inspection, test, treatment, or vaccination, as directed by the department.

History: En. Sec. 1, Ch. 94, L. 1943; amd. Sec. 1, Ch. 27, L. 1973; amd. Sec. 11, Ch. 12, L. 1977.

Amendments

The 1973 amendment substituted "school district, as determined from the permanent records of the board of county commissioners describing school district boundaries" in the first paragraph for "township, as determined by government survey"; substituted "school district" for "township" elsewhere throughout the sec-

tion; and substituted "board of livestock" or "department of livestock" for "livestock sanitary board" throughout the section.

The 1977 amendment inserted the subsection designations; substituted "department" throughout the section for "Montana department of livestock"; deleted "and regulations" after "rules" in the latter part of subsection (1); substituted "section" in subsections (2) and (3) for "act"; and made minor changes in style, punctuation and phraseology.

46-213. Duty of county assessor. The assessment roll of the county in which the disease control area is to be established is the basis for computing the required percentage of livestock owners and livestock. The county assessor shall certify to the department, when the necessary seventy-five per cent (75%) of the owners of livestock representing not less than fifty per cent (50%) of the species of livestock to be inspected, tested, treated, or vaccinated have signed the required petition.

History: En. Sec. 2, Ch. 94, L. 1943; amd. Sec. 60, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "Montana livestock sanitary board at Helena" and made minor changes in phraseology and punctuation.

46-214. Owner guilty of misdemeanor, when. A person in a disease control area who does not gather his livestock after being notified by the department or its agent, to have the livestock available or who refuses to have the livestock inspected, tested, treated, or vaccinated or violates this act, is guilty of a misdemeanor.

History: En. Sec. 3, Ch. 94, L. 1943; amd. Sec. 61, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "Montana livestock sanitary board" and made minor changes in phraseology.

46-216. Sale of carcasses unsanitarily slaughtered or handled. It is unlawful for a person, firm, or corporation to sell as food for human beings, or to possess as human food intended for sale, the carcass or part of carcass of an animal slaughtered under unsanitary conditions, or which carcass or part of carcass has been prepared, handled, or kept under unsanitary conditions. The department shall see that this section is enforced.

History: En. Sec. 10, Ch. 262, L. 1921; re-en. Sec. 3269, R. C. M. 1921; amd. Sec. 62, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "department" for "livestock sanitary board" and made minor changes in phraseology and punctuation.

46-217. Authority of municipal corporations. This chapter does not prevent the governing authority of a municipal corporation from enacting

or enforcing ordinances for the inspection of slaughterhouses, meat depots, meat markets, meat food products, creameries, butter or cheese factories, dairies, or dairy products, located, sold, or offered for sale in the limits of the municipal corporation. An ordinance may not be enforced in conflict with the powers of this chapter delegated to the department and its officers or agents.

History: En. Sec. 11, Ch. 262, L. 1921; re-en. Sec. 3270, R. C. M. 1921; amd. Sec. 63, Ch. 310, L. 1974; amd. Sec. 12, Ch. 12, L. 1977.

Amendments

The 1974 amendment substituted "department" for "livestock sanitary board"

and made minor changes in phraseology and punctuation.

The 1977 amendment substituted "chapter" in two places for "act"; inserted "located" near the end of the first sentence; and made minor changes in punctuation and phraseology.

46-218. Classification of animals as to compensation for slaughter. Animals slaughtered under the direction of the department by order of the board are divided into two classes for the purposes of compensation:

(1) Animals determined by the department to be affected with an incurable disease, which are destroyed by order of the board, are designated as animals of class 1, and unless otherwise provided each of the animals shall be paid for on the basis of 75% of its appraised value. The county in which the animal was owned at the time it was determined to be affected with an incurable disease is liable in part, as later provided, for an indemnity to be paid for the animal. The ownership and county are determined by an affidavit of the owner of the animal or his agent. Each animal directed to be destroyed shall be appraised by a representative or an authorized agent of the department with the owner agreeing in writing as to the value of the animal. When appraised, due consideration shall be given to its breeding value as well as its dairy or meat value and the condition of the animal as to the disease and the present and probable effect of the disease on the animal. In the absence of an agreement, there shall be appointed three competent, disinterested parties, one appointed by the department, one by the owner, and a third by the first two, to appraise each animal, taking into consideration its breeding value as well as its dairy or meat value and the condition of the animal as to the disease and the present probable effect of the disease on the animal. The judgment of the majority is the judgment of the appraisers and is binding on both parties as the final determination of indemnity to be paid for each animal. The total compensation of each group of appraisers is limited to \$5 for the group appraisal, one-half of which shall be paid by the department. The total amount of indemnity paid by the state and a county for an animal may not exceed the actual sound value of an animal of its class, and the total combined amount of indemnity paid for the animal by the state and a county may not exceed the sum of \$100 for a registered purebred animal or the sum of \$50 for a grade animal. Animals presented for appraisal as purebreds shall be accompanied by their registration papers at the time of appraisal or they shall be appraised as grades. If purebreds are less than 3 years old and not registered, the department may grant a reasonable time for their registration and presentation of their registra-

tion papers to the appraiser. Registration papers shall accompany the claim for indemnity.

(2) Animals of class 1 shall be paid for on the basis of their full appraised value as determined in this section if no evidence of incurable disease is disclosed by autopsy, bacteriologic, serologic, microscopic, or other findings. The total combined amount of indemnity paid by the state and a county for an animal may not exceed the actual sound value of an animal of its class. The total combined amount of indemnity paid by the state and a county for the animal may not exceed \$100 for a registered purebred animal or \$50 for a grade animal.

(3) Animals which are determined by the department to be affected with or exposed to foot-and-mouth disease, rinderpest, contagious pleura pneumonia, surra, or other infectious, contagious, communicable, or dangerous disease, which is not of its nature necessarily fatal, and are destroyed by order of the department as a sanitary safeguard, are designated as animals of class 2 and each animal shall be paid for on the basis of its full appraised value. The appraised value shall be determined in the manner set out in subsection (1) of this section. The appraisal of the animals shall be based on the meat, dairy, or breeding value of the animal, but where appraisal is based on breeding value of the animal, no appraisal may exceed three times its meat or dairy value. The total amount of indemnity paid by the state for an animal may not exceed the actual sound value of an animal in its class. No indemnity for a class 2 animal may be paid by a county. In the case of destruction of an animal afflicted with brucellosis (Bang's disease), no indemnity shall be paid for the animal unless the board, in its discretion, determines the best interests of this state will be served by payment of an indemnity. In this event, the board shall set out standards of indemnity by rules and may not pay in excess of \$100 for a registered purebred animal or \$50 for a grade animal. In all cases where the federal government or agency other than the state compensates the owner in whole or in part for livestock destroyed as a sanitary safeguard, the amount of compensation from the state shall be determined under 46-229.

(4) Animals which are injured or killed while they are being inspected or tested under an order of the department or its agent, which do not come within either class 1 or class 2, may be paid for at their full appraised value if the claim for the animal is recommended for payment at a meeting of the board. Where it is shown that the injury or death of the animal was not proximately due to the negligence of the owner or his agent, the whole claim, when approved, shall be paid out of department funds. The limit of indemnity for an animal paid for by the state may not exceed that fixed by this section for animals of class 2.

History: En. Sec. 12, Ch. 262, L. 1921; re-en. Sec. 3271, R. C. M. 1921; amd. Sec. 1, Ch. 75, L. 1943; amd. Sec. 1, Ch. 107, L. 1949; amd. Sec. 64, Ch. 310, L. 1974; amd. Sec. 13, Ch. 12, L. 1977.

Amendments

The 1974 amendment substituted "direction of the department by order of the

board" for "direction of the Montana livestock sanitary board or an agent thereof" in the introductory clause; substituted references to "department" throughout the section for references to "Montana livestock sanitary board"; substituted "determined by the department" for "determined by the state veterinary surgeon or by a deputy state veterinary surgeon" in

the first sentences of subsections (1) and (3); substituted "order of the board" for "order of such officer" in the first sentence of subsection (1); substituted "order of the department" for "order of such officer" in the first sentence of subsection (3); substituted "board" for "livestock sanitary board" in two places in the fifth sentence of subsection (3); and made minor changes in phraseology, punctuation and style.

The 1977 amendment deleted "under this act" after "board" near the beginning of the section; substituted "board" at the end of the first sentence of subdivision (4) for "department"; substituted "section" in the last sentence of subdivision (4) for "act"; and made minor changes in phraseology, punctuation and style.

46-219. Payment for other personal property. Personal property other than livestock destroyed by order of the department shall be paid for on the basis of its appraised value. The appraised value is determined in the manner specified in section 46-218 for the determination of the appraised value of animals.

History: En. Sec. 13, Ch. 262, L. 1921; re-en. Sec. 3272, R. C. M. 1921; amd. Sec. 2, Ch. 75, L. 1943; amd. Sec. 65, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "Montana livestock sanitary board or an authorized representative thereof"; substituted "section 46-218" for "the preceding section"; and made minor changes in phraseology and punctuation.

46-220. Indemnity—from what funds paid. In payment for animals or property destroyed by order of the department, the state shall pay one-half of the indemnity out of the money at the disposal of the department. The county liable in part for the indemnity shall pay one-half of the total indemnity out of the general fund of the county.

History: En. Sec. 14, Ch. 262, L. 1921; re-en. Sec. 3273, R. C. M. 1921; amd. Sec. 66, Ch. 310, L. 1974; amd. Sec. 14, Ch. 12, L. 1977.

Amendments

The 1974 amendment substituted "de-

partment" for "livestock sanitary board" in two places and made minor changes in phraseology and punctuation.

The 1977 amendment deleted "as determined by this act" before "shall pay" in the second sentence; and made minor changes in style.

46-221. Presentation of claims for indemnity. Claims against the state and county which arise from the destruction of animals or property destroyed by order of the department shall be made on forms provided by the department. They must contain an affidavit by the owner or his agent with knowledge of the animal or property certifying to the ownership of the animal or property, the county in which they are owned, and that the animal or property has been destroyed, under the law and the rules of the department. These claims must be accompanied by a certificate from the department that the animal or property was ordered destroyed. The claims shall also be accompanied by a certificate of appraisal as appraisal is determined under section 46-218, together with an account of sale showing the net proceeds from the sale of the animal, if any, paid to the owner of the animal.

History: En. Sec. 15, Ch. 262, L. 1921; re-en. Sec. 3274, R. C. M. 1921; amd. Sec. 4, Ch. 75, L. 1943; amd. Sec. 67, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "department" for "Montana livestock sanitary board" in three places and made minor changes in phraseology and punctuation.

46-222. Indemnity for class 2 animals in state less than one hundred and twenty (120) days. Indemnity for animals of class 2, when the animals have not been in this state for at least one hundred and twenty (120) days and the payment is authorized by the department under section 46-228 (5), shall be paid out of department funds.

History: En. Sec. 5, Ch. 75, L. 1943; amd. Sec. 68, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "department" for "Montana livestock sanitary

board"; deleted "and approved by the state board of examiners" after "authorized by the department"; substituted "department funds" for "sanitary board funds"; and made minor changes in phraseology and punctuation.

46-224. Examination and payment of claims. Claims against the state arising under this chapter, if found correct, shall be processed and paid from funds of the department.

History: En. Sec. 16, Ch. 262, L. 1921; re-en. Sec. 3275, R. C. M. 1921; amd. Sec. 21, Ch. 97, L. 1961; amd. Sec. 69, Ch. 310, L. 1974; amd. Sec. 15, Ch. 12, L. 1977.

Amendments

The 1974 amendment substituted "funds

of the department" for "any funds or account at the disposal of the livestock sanitary board."

The 1977 amendment substituted "chapter" for "act."

46-226. Sale of condemned carcasses—disposal of proceeds. Where the carcass of an animal ordered destroyed under this chapter is found on official post-mortem inspection to be fit for human consumption, the owner shall receive the net proceeds from the sale of the carcass. The proceeds shall be deducted from his claim against the state and county for the slaughter. A representative of the department may, when considered advisable or necessary or when it is desired by the owner, sell the carcass on terms he considers to be in the best interests of this state, and the net proceeds obtained from the sale shall be paid to the owner. This procedure does not invalidate the owner's claim for indemnity for any balance due him.

History: En. Sec. 18, Ch. 262, L. 1921; re-en. Sec. 3277, R. C. M. 1921; amd. Sec. 1, Ch. 177, L. 1937; amd. Sec. 70, Ch. 310, L. 1974; amd. Sec. 16, Ch. 12, L. 1977.

Amendments

The 1974 amendment substituted "de-

partment" for "livestock sanitary board" in the third sentence and made minor changes in phraseology and punctuation.

The 1977 amendment substituted "chapter" in the first sentence for "act"; and made minor changes in punctuation and style.

46-227. Rules—agreement with federal government. When the department determines that it is necessary to eradicate or control an infectious, contagious, communicable, or dangerous disease of livestock in this state, in co-operation with the United States department of agriculture or other federal agency and to appraise and destroy animals affected with, or which have been exposed to a disease, or to destroy property in order to remove the infection and complete the cleaning and disinfection of the premises, or to do any act or incur any other expense reasonably necessary in suppressing this disease, the board may accept and adopt on behalf of the state, the rules adopted by the United States department of agriculture or other federal agency under authority of an act of Congress, or the portion considered necessary, suitable, or applicable.

The department may adopt other rules necessary or desirable for this purpose, and co-operate with the United States department of agriculture or other federal agency in the enforcement of the rules accepted and adopted.

History: En. Sec. 2, Ch. 177, L. 1937; amd. Sec. 71, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "department" for "livestock sanitary board" in the first sentence; substituted "United

States department of agriculture" for "United States bureau of animal industry" in three places; inserted "The department may" at the beginning of the last sentence; and made minor changes in phraseology and punctuation.

46-228. Persons entitled to indemnity. (1) The owner of an animal or property destroyed under this chapter is entitled to indemnity, except in the following cases:

- (a) animals belonging to the United States;
- (b) animals brought into this state which violate this chapter or rules of the department;
- (c) animals which the owner or claimant knew to be diseased or had notice of the disease at the time they came into his possession;
- (d) animals which had the disease for which they were slaughtered or which were destroyed because of exposure to the disease at the time of their arrival in this state. However, a class 2 animal shipped into this state under department rules and accompanied by the proper certificate of health from a recognized state or federal veterinarian may be paid for when payment is authorized by the department.
- (e) animals which have not been in this state for at least 120 days before the discovery of the disease; however, class 2 animals which have not been in the state 120 days may be paid for when payment is authorized by the department;
- (f) when the owner or agent has not used reasonable diligence to prevent disease or exposure to disease;
- (g) when the owner or agent has not complied with the rules of the department with respect to animals condemned;
- (h) when animals condemned are not destroyed within 60 days after they are determined to be affected with or exposed to a disease which requires them to be destroyed by order of the department.

(2) No compensation or indemnity will be paid for the destruction of livestock affected with tuberculosis or other infectious, contagious, communicable, or dangerous disease unless the entire herd or band of affected livestock is under the supervision of the department for the eradication of the disease.

History: En. Sec. 19, Ch. 262, L. 1921; re-en. Sec. 3278, R. C. M. 1921; amd. Sec. 22, Ch. 97, L. 1961; amd. Sec. 72, Ch. 310, L. 1974; amd. Sec. 17, Ch. 12, L. 1977.

Amendments

The 1974 amendment substituted "rules of the department" for "regulations of the livestock sanitary board" at the end of

subdivision (2); substituted "department rules" for "livestock sanitary board regulations" in the second sentence of subdivision (4); substituted "authorized by the department" for "authorized at a meeting of the livestock sanitary board" at the end of subdivision (4); substituted "authorized by the department" for "authorized at a meeting of the livestock

sanitary board" at the end of subdivision (5); substituted "rules of the department" for "rules and regulations of the livestock sanitary board" in subdivision (7); substituted "supervision of the department" for "supervision of the livestock sanitary board" in subdivision (8); substituted "order of the department" for "order of the livestock sanitary board" at the end of subdivision (9); and made changes in phraseology and punctuation.

The 1977 amendment inserted the subsection (1) designation at the beginning of the section redesignated former subdivisions (1) through (7) and (9) as subdivisions (1)(a) through (1)(h); redesignated former subdivision (8) as subsection (2); and made minor changes in phraseology, punctuation and style.

46-229. Compensation from federal government or other agency. If the federal government, or an agency other than the state or county, compensates the owner for livestock or property destroyed by order of the department the amount of the compensation from the federal government, or other agency, shall be deducted from the owner's claim, as filed against the state and county, that is, from the balance that remains after the net salvage price received from the sale or other disposal of the condemned animal has been deducted from the appraised value. If the owner or agent of the livestock or property destroyed by order of the department forfeits an indemnity, which the owner would otherwise be entitled to from the federal government, or compensating agency other than the state or county, by violation of the rules of the federal government, or other agency; an amount equal to the indemnity which would have been paid by the federal government, or other indemnifying agency, but for the forfeiture, shall also be deducted from the owner's claim; that is, the balance that remains after the net salvage price received from the sale or other disposal of the condemned animal has been deducted from the appraised value.

History: En. Sec. 20, Ch. 262, L. 1921; re-en. Sec. 3279, R. C. M. 1921; amd. Sec. 3, Ch. 75, L. 1943; amd. Sec. 1, Ch. 164, L. 1945; amd. Sec. 73, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "Montana livestock sanitary board" in two places; substituted "rules of the federal government" for "regulations of the federal government" in the second sentence; and made minor changes in phraseology and punctuation.

46-230. Expenses, how paid—lien and foreclosure. The expense of inspecting, testing, supervision of quarantine, supervision of dipping, supervision of disinfection, and supervision of other treatment of livestock by the department and the sanitary inspection of dairies, packing houses, meat depots, slaughterhouses, milk depots, and other premises shall be paid for by the department. However, the owner of the livestock or property is liable for all expenses except the salary of the supervising officer representing the department, when the owner, agent, or person in charge of the livestock or property has violated the rules of the department. These expenses are a lien on the livestock or other property, and the department may retain possession of the livestock until the charges and expenses are paid. The lien is not dependent on possession, and may be foreclosed in the name of the agent of the department by sale of the stock, or as many as may be necessary to pay the sum of the costs, at public auction, after 10 days' notice by posting in three public places in the county. The lien may also be foreclosed by an action in a court of com-

petent jurisdiction against the owner of the livestock to recover the amount of charges and expenses.

History: En. Sec. 21, Ch. 262, L. 1921; re-en. Sec. 3280, R. C. M. 1921; amd. Sec. 74, Ch. 310, L. 1974; amd. Sec. 18, Ch. 12, L. 1977.

Amendments

The 1974 amendment substituted references to "department" throughout the section for references to "livestock sanitary board"; substituted "rules of the de-

partment" for "regulations of the livestock sanitary board" in the second sentence; and made minor changes in phraseology and punctuation.

The 1977 amendment deleted "under this act" after "livestock by the department" and "premises" in the first sentence; and made minor changes in phraseology, punctuation and style.

46-231. Expense of cleaning and disinfecting carriers' facilities. The expense of cleaning and disinfecting cars, yards, or other transportation facilities of a common carrier, when required by the department, is a charge against the common carrier. Also, the expense of supervising the cleaning and disinfecting of cars for transportation of livestock, when required at a point other than disinfection points agreed on between the department and the carrier, is a charge against the common carrier.

History: En. Sec. 22, Ch. 262, L. 1921; re-en. Sec. 3281, R. C. M. 1921; amd. Sec. 75, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "department" for "livestock sanitary board" and "board" and made minor changes in phraseology and punctuation.

46-232. Licensing of milk plants and dairies selling milk or cream for public consumption. (1) It is unlawful for the following businesses to operate in this state without first obtaining a license from the department of livestock:

(a) a dairy selling milk or cream for public consumption in the form in which it is originally produced;

(b) a condensed, evaporated, or powdered milk plant;

(c) a fluid milk plant. A fluid milk plant is a place where milk or cream is not produced but is purchased or collected and prepared for distribution to the consumer in liquid form.

(2) A license expires on December 31 of the year issued. The department may, following the procedures in the Montana Administrative Procedure Act, deny, suspend, or revoke a license when it determines that a person to whom the license is issued has failed to comply with the rules of the department or has failed to conduct his establishment in a sanitary manner. All license fees collected shall be deposited into the general fund.

(3) The department may issue a restraining order prohibiting a dairy from selling or giving away milk or cream not produced or handled under the laws of this state or the rules of the department. It is unlawful for a dairy, while restrained, to sell or give away for public consumption milk or cream produced or handled by the dairy, and it is also unlawful for a dairy products manufacturing plant, milk plant, or cream station to purchase or use the cream or milk from a dairy while the dairy is restrained.

(4) The following license fees are charged for licenses issued under this section:

- (a) condensed, evaporated or powdered milk factory, \$50;
- (b) fluid milk plant, \$50;
- (c) dairy, \$5.
- (5) A person violating this section is guilty of a misdemeanor.

History: En. Sec. 23, Ch. 262, L. 1921; re-en. Sec. 3282, R. C. M. 1921; amd. Sec. 11, Ch. 35, L. 1923; amd. Sec. 1, Ch. 170, L. 1929; amd. Sec. 1, Ch. 382, L. 1973; amd. Sec. 76, Ch. 310, L. 1974; amd. Sec. 19, Ch. 12, L. 1977.

Amendments

The 1973 amendment substituted "department of livestock, animal health division" for "livestock sanitary board" throughout the section; deleted "and without having been converted into some manufactured product" from the end of subdivision (1)(a); inserted "fluid" before "milk plants" at the beginning of subdivision (1)(b) and in subdivision (4)(b); deleted a reference to the veterinary surgeon from the second sentence of subdivision (2); inserted "following the procedures outlined in the Montana Administrative Procedure Act" and "deny, suspend or" in the second sentence of subdivision (2); deleted from subsection

(3) a first sentence pertaining to the exemption from licensing of dairies producing milk or cream for sale to dairy products manufacturing plants or producing only butter; revised the classifications and increased the license fees; and made minor changes in phraseology and style.

The 1974 amendment inserted the numerical subsection designations; inserted the alphabetical subdivision designations in subsections (1) and (4); deleted "animal health division" after "department of livestock" at the end of the introductory clause of subsection (1); substituted "department" for "department of livestock, animal health division" in two places in subsection (2); substituted "department" for "department of livestock" in subsection (3); and made minor changes in phraseology and punctuation.

The 1977 amendment substituted "this section" in subdivision (5) for "this act"; and made minor changes in phraseology, punctuation and style.

46-233. Exceptions of certain producers of meats and dairy products. The owners or operators of slaughterhouses, packing houses, meat depots, dairies, creameries, butter factories, cheese factories, or other places of business engaged in the production, storage, or transportation of meats, meat foods, or dairy products are not required to procure a license from the department of health and environmental sciences, insofar as the business of production, storage, or transportation of these food products is concerned. This section does not limit the supervision or regulation of the sanitary condition of a restaurant, hotel, boardinghouse, or retail market or the products sold or offered for sale thereat by the department of health and environmental sciences, nor does this section limit the duties imposed by law on the department of health and environmental sciences to make sanitary rules for the eradication or control of an epidemic of human disease which may exist in a community.

History: En. Sec. 24, Ch. 262, L. 1921; re-en. Sec. 3283, R. C. M. 1921; amd. Sec. 77, Ch. 310, L. 1974; amd. Sec. 20, Ch. 12, L. 1977.

Amendments

The 1974 amendment substituted "department of health and environmental sciences" for "state board of health" in

three places; substituted "sanitary rules" for "sanitary regulations" near the end of the section; and made minor changes in phraseology and punctuation.

The 1977 amendment substituted "section" two places in the second sentence for "act"; and made minor changes in phraseology, punctuation and style.

46-234. Cooperation by public officers. The department of health and environmental sciences, the board of health and environmental sciences, and local boards of health of a county, city, or town shall cooperate with and assist the department of livestock in matters which relate to the

execution of its sanitary powers regarding livestock and their food products under this chapter in the manner which the department of livestock prescribes, either by general rule or direct order.

History: En. Sec. 25, Ch. 262, L. 1921; re-en. Sec. 3284, R. C. M. 1921; amd. Sec. 78, Ch. 310, L. 1974; amd. Sec. 21, Ch. 12, L. 1977.

Amendments

The 1974 amendment substituted "department" for "livestock sanitary board" in two places; substituted "general rule" for "general regulation" near the end of

the section; and made changes in phraseology.

The 1977 amendment substituted "department of health and environmental sciences, the board of health and environmental sciences" for "state"; deleted "or village" after "town"; inserted "of livestock" after "department" two places; substituted "chapter" for "act" and made minor changes in punctuation.

46-235. Slaughterhouse license—fees and renewals. It is unlawful for a person, firm, or corporation to maintain or conduct a slaughterhouse, meat packing house, or meat depot in this state without having a license issued by the department. The annual fee for a license issued under this section is \$1 and shall be paid into the general fund. All licenses expire on December 31 of the year in which they are issued and shall be renewed by the department on request of the licensee. However, when the department finds that the place for which the license is issued is not conducted in accordance with the rules and orders of the board made under 46-208, the department shall revoke the license and may not renew it until the place is in a sanitary condition in accordance with department rules.

History: En. Sec. 26, Ch. 262, L. 1921; re-en. Sec. 3285, R. C. M. 1921; amd. Sec. 79, Ch. 310, L. 1974; amd. Sec. 22, Ch. 12, L. 1977.

Amendments

The 1974 amendment substituted references to "department" throughout the section for references to "livestock sanitary board" and "board"; substituted "rules and orders of the board" for "rules, regulations, and orders of said

board" in the last sentence; substituted "department rules" for "such rules and regulations" at the end of the section; deleted an obsolete proviso at the end of the section pertaining to licenses issued by the state board of health; and made minor changes in phraseology and punctuation.

The 1977 amendment substituted "46-208" in the last sentence for "this act"; and made minor changes in phraseology, punctuation and style.

46-236. Duty to report contagious diseases. A person, including the owner or custodian, who has reason to suspect the existence of a dangerous, infectious, contagious, or communicable disease in livestock, or the presence of exposed animals to the disease, in this state shall immediately give notice to the department.

History: En. Sec. 27, Ch. 262, L. 1921; re-en. Sec. 3286, R. C. M. 1921; amd. Sec. 80, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "department" for "state veterinary surgeon" at the end of the section and made minor changes in phraseology.

46-238. (3288) Penalty for violation. Any person, persons, firm, or corporation violating any provision of this chapter, or the rule or order promulgated by authority of same, shall be guilty of a misdemeanor. Violations of this chapter shall be tried without undue delay in any court of competent jurisdiction.

History: En. Sec. 29, Ch. 262, L. 1921; re-en. Sec. 3288, R. C. M. 1921; amd. Sec. 23, Ch. 12, L. 1977.

Amendments

The 1977 amendment substituted "chapter" in two places for "act"; deleted "regulation" after "rule"; and made minor changes in punctuation.

46-239. Civil liability. A person, firm, or corporation who violates this chapter or rules or orders of the department is liable for damages sustained by a person because of the violation. The damages may be recovered by the person in a civil action in a court of competent jurisdiction.

History: En. Sec. 30, Ch. 262, L. 1921; re-en. Sec. 3289, R. C. M. 1921; amd. Sec. 81, Ch. 310, L. 1974; amd. Sec. 24, Ch. 12, L. 1977.

or orders of the department" for "regulations or orders of the livestock sanitary board (or state veterinary surgeon)" and made minor changes in phraseology.

Amendments

The 1974 amendment substituted "rules

The 1977 amendment substituted "chapter" in the first sentence for "act."

46-239.1. Feedlot defined. A feedlot is a confined livestock feeding operation where the owner or operator of the feedlot feeds livestock belonging to others for a fee.

History: En. Sec. 1, Ch. 32, L. 1974.

stock which dies in the feedlot; and providing a penalty.

Title of Act.

An act requiring the inspection of live-

46-239.2. Dead animals in feedlots — inspection required. When a stock animal dies in a feedlot, the feedlot operator shall notify the board of livestock or its representative of the death. The operator may not dispose of the carcass until a livestock inspector has observed it and determined the brand of the owner of the animal. A livestock inspector observing a dead stock animal pursuant to this section shall, within forty-eight (48) hours, send written notification to the owner of the animal.

History: En. Sec. 2, Ch. 32, L. 1974.

46-239.3. Penalty. A feedlot operator who violates section 2 [46-239.2] of this act is guilty of a misdemeanor, and on conviction shall be subject to imprisonment for not more than six (6) months or a fine of not more than five hundred dollars (\$500), or both.

History: En. Sec. 3, Ch. 32, L. 1974.

46-240. Power of department concerning oaths and witnesses. When in the exercise of its powers or the discharge of its duties, it becomes necessary for an employee of the department to investigate facts and conditions, he may administer oaths, take affidavits, and compel the attendance and testimony of witnesses.

History: En. Sec. 31, Ch. 262, L. 1921; re-en. Sec. 3290, R. C. M. 1921; amd. Sec. 82, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "department" for "board" in the caption;

substituted "an employee of the department" for "any member of the livestock sanitary board, the state veterinary surgeon, or authorized agent"; and made minor changes in phraseology and punctuation.

46-241. (3291) Repealed.**Repeal**

This section (Sec. 32, Ch. 262, L. 1921), relating to the livestock sanitary board

account, was repealed by Sec. 242, Ch. 147, Laws 1963.

46-242. (3292) Repealed.**Repeal**

Section 46-242 (Sec. 33, Ch. 262, L. 1921), relating to the annual report of the

state veterinary surgeon, was repealed by Sec. 44, Ch. 93, Laws 1969. For present law, see secs. 82-4001 and 82-4002.

46-243. (3293) Repealed.**Repeal**

Section 46-243 (Sec. 34, Ch. 262, L. 1921; Sec. 83, Ch. 310, L. 1974; Sec. 25, Ch. 12, L. 1977), relating to personal

liability of members and officers of the department, was repealed by Sec. 9, Ch. 234, Laws 1977.

46-247. Sale of diseased carcasses without inspection forbidden. It is unlawful for a person to sell or offer for sale the carcass or any part of the carcass of an animal having actinomycosis (big jaw), tuberculosis, or any other infectious or contagious disease unless it has been inspected and passed by a representative of the department of livestock or the United States department of agriculture.

History: En. Sec. 1, p. 163, L. 1901; re-en. Sec. 8492, Rev. C. 1907; amd. Sec. 1, Ch. 39, L. 1917; re-en. Sec. 11243, R. C. M. 1921; Sec. 94-35-172, R. C. M. 1947; redes. 46-247 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 199, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "department of livestock or the United States department of agriculture" for "livestock sanitary board of the United States bureau of animal industry" at the end of the section and made minor changes in phraseology.

46-248. (11244) Penalty. Any person guilty of violating 46-247 is guilty of a misdemeanor and upon conviction is punishable by a fine not exceeding \$500 or by imprisonment in the county jail not exceeding 1 year or by both fine and imprisonment.

History: En. Sec. 2, Ch. 39, L. 1917; re-en. Sec. 11244, R. C. M. 1921; Sec. 94-35-173, R. C. M. 1947; redes. 46-248 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 26, Ch. 12, L. 1977.

Amendments

The 1977 amendment substituted "46-247" for "this act"; and made minor changes in phraseology, punctuation and style.

CHAPTER 3—TUBERCULIN REGULATION, SALE AND DISTRIBUTION

Section 46-301. Tuberculin—permission for sale or distribution of.

46-302. Same—report of sales or distribution.

46-301. Tuberculin—permission for sale or distribution of. A person, firm, or corporation desiring to sell or distribute tuberculin for animal use in this state must first secure permission from the department of livestock.

History: En. Sec. 1, Ch. 118, L. 1917; re-en. Sec. 3296, R. C. M. 1921; amd. Sec. 84, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "department of livestock" for "livestock sanitary board" and made minor changes in phraseology.

46-302. Same—report of sales or distribution. A person, firm, or corporation, who has secured permission from the department to sell or distribute tuberculin for animal use in this state shall, on the same day he sells, furnishes, or supplies tuberculin, report in writing to the department the name and address of the person and a statement of the amount of tuberculin supplied to him.

History: En. Sec. 2, Ch. 118, L. 1917; re-en. Sec. 3297, R. C. M. 1921; amd. Sec. 85, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "department" for "livestock sanitary board" in two places and made minor changes in phraseology.

CHAPTER 4—MONTANA MEAT INSPECTION LAW

(Repealed—Section 201, Chapter 310, Laws of 1974)

46-401 to 46-415. (3298.1 to 3298.15) Repealed.

Repeal

Sections 46-401 to 46-415 (Secs. 1 to 15, Ch. 142, L. 1931), comprising "the Montana meat inspection law," were repealed by Sec. 201, Ch. 310, Laws of 1974.

CHAPTER 5—BUTCHERS' AND MEAT PEDDLERS' LICENSES—DUTY AS TO HIDES OF SLAUGHTERED CATTLE

Section 46-501. Butcher and meat peddler defined.

46-503. Inspection and marking of hides of slaughtered cattle—records—bill of sale to be presented, when—license or inspection not necessary, when.

46-506. Proviso.

46-501. (3298.16) Butcher and meat peddler defined. A person, firm, corporation, or association who slaughters neat cattle for the purpose of selling or distributing the meat or by-products of the cattle in this state, and who maintains slaughterhouses for this purpose, and a person, firm, corporation, or association who maintains a meat market or meat markets for the purpose of selling or distributing any of the meat or by-products of the cattle in this state, and who, in either case, complies with the rules of the department of livestock and the board of health and environmental sciences, and with the city or town health ordinances where the business is operated, or any other ordinance pertaining to meat dealers, is, for the purpose of this act, designated a "butcher." A person, firm, corporation, or association who slaughters neat cattle or buys and sells any dress beef or veal, and who does not maintain a licensed slaughterhouse or market, is, for the purpose of this act, designated a "meat peddler."

History: En. Sec. 1, Ch. 172, L. 1931; amd. Sec. 1, Ch. 42, L. 1943; amd. Sec. 86, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "rules of the department of livestock and the board of health and environmental sciences" for "rules and regulations of the Montana livestock sanitary board and the state board of health" in the first sentence and made minor changes in phraseology and punctuation.

46-503. (3298.18) Inspection and marking of hides of slaughtered cattle—records—bill of sale to be presented, when—license or inspection not necessary, when. (1) All persons shall have the hide in its entirety

with tail and ears attached, of each beef or veal inspected by a sheriff or his deputy in the county where the animal was slaughtered. The sheriff or his deputy shall mark the hide in the manner which the department requires by rule. The sheriff shall make the inspection required by this act. Each of the four quarters presented shall be stamped with an ink stamp; the stamp shall be provided by the county and the form specified by the department however, the stamp need not be affixed if the meat has been inspected and stamped by an inspector of the department. The sheriff or deputy shall keep a record and issue a certificate of inspection, on a form provided by the county; the form shall be specified by the department, giving the butcher's, peddler's, or person's name, the place of business, the serial number of the inspection of the hide, the brand on the hide, the date of inspection, and the place where the inspection was made. The officer who makes the inspection shall forward a copy of the inspection certificates to the department, and to the county clerk of the county in which the inspection was made, on or before the first day of each month. The inspection certificates shall be placed on file in these offices.

(2) When ownership of the carcass and hide presented is claimed on a bill of sale, the officer making the inspection shall demand and receive the original bill of sale, which shall be attached to the inspector's certificate sent to the county clerk and recorder. When the bills of sale cover cattle not included in the inspection, the inspector shall issue to the owner of the bill of sale a receipt for the bill of sale. The receipt shall describe the balance of the cattle covered by the original bill of sale.

(3) Instead of the inspection provided for above, the department may in its discretion designate a person to make a live inspection of all meat cattle at any licensed slaughterhouse and to issue a certificate of inspection. The inspector shall inspect and mark the hide and identify the meat in the manner which the department prescribes by rule. The marking of the hide is sufficient compliance with section 46-508.

(4) In case of an emergency or custom slaughter involving not more than two (2) cattle a licensed slaughterhouse may slaughter without a live inspection if the hide from the cattle is held separate from other hides until inspected and cleared by the inspector in charge.

History: En. as part of Sec. 3, Ch. 172, L. 1931; amd. Sec. 1, Ch. 78, L. 1941; amd. Sec. 1, Ch. 37, L. 1961; amd. Sec. 87, Ch. 310, L. 1974.

Amendments

The 1974 amendment inserted the numerical subsection designations; substi-

tuted references to "department" throughout subsections (1) and (3) for references to "livestock commission," "livestock sanitary board," and "secretary of the livestock commission at Helena"; and made minor changes in phraseology and punctuation.

46-506. Proviso. This act does not prevent an inspector appointed by the department from making an inspection.

History: En. Sec. 3, Ch. 78, L. 1941; amd. Sec. 88, Ch. 310, L. 1974.

Amendments

The 1974 amendment rewrote this sec-

tion which read: "Nothing herein provided shall prevent such inspection being made by an inspector appointed by the livestock commission."

CHAPTER 6—RECORDING OF MARKS AND BRANDS

- Section 46-601. Recorder of marks and brands.
 46-603. Recording of brands required.
 46-604. Application for recording—record of brands.
 46-605. Designation of years for rerecording brands.
 46-606. Right of owner of recorded brand.
 46-607. Publication of notice of re-recording brands.
 46-609. Fees for department.

46-601. (3299) Recorder of marks and brands. The department of livestock is the general recorder of marks and brands.

History: En. Sec. 2940, Pol. C. 1895; re-en. Sec. 1790, Rev. C. 1907; re-en. Sec. 3299, R. C. M. 1921; amd. Sec. 89, Ch. 310, L. 1974.	Amendments The 1974 amendment substituted "de- partment of livestock" for "secretary of the livestock commission."
--	--

46-603. (3301) Recording of brands required. It is unlawful for a person, firm, or corporation to artificially brand, mark, or cause to be artificially branded or marked, any domestic animal or livestock, running at large, on the public domain, or open range, or which may run or stray at large or on the public domain or open range, unless the artificial brand or mark has been recorded or re-recorded with the department, in the name of the person, firm, or corporation, within the period of ten (10) years immediately preceding the branding or marking.

History: En. Sec. 1, Ch. 144, L. 1921; re-en. Sec. 3301, R. C. M. 1921; amd. Sec. 90, Ch. 310, L. 1974.	Amendments The 1974 amendment substituted "de- partment" for "general recorder of marks and brands" and made minor changes in phraseology and punctuation.
--	---

46-604. (3302) Application for recording—record of brands. A person, firm, or corporation desiring to have recorded an artificial mark or brand for use in distinguishing or identifying the ownership of any domestic animal or livestock, shall make application for the mark or brand to the department. The application must be in writing, and must contain the name, residence, and post-office address of the applicant, and the species of the animals on which the mark or brand is to be used. The department shall designate for the applicant's use some practical form of mark or brand, distinguishable with reasonable certainty from all other marks and brands recorded, or re-recorded, within the period of ten (10) years immediately preceding the time of filing the application, in the name of some person, firm, or corporation other than the applicant. The department shall designate the position on the animals on which the mark or brand shall be placed, and the species of animals on which the mark or brand may be used. The department shall keep a record in a book kept by it for that purpose, of the particular mark or brand, the position on the animal where the mark or brand is to be used, the species of animals on which the mark or brand is to be used, and the date of recording. The record is a public record and is prima facie evidence of the facts recorded in it.

History: En. Sec. 2, Ch. 144, L. 1921; re-en. Sec. 3302, R. C. M. 1921; amd. Sec. 91, Ch. 310, L. 1974.	ences to the "department" throughout the section for references to the "general re- corder of marks and brands" and made minor changes in phraseology.
--	---

Amendments

The 1974 amendment substituted refer-

46-605. (3303) Designation of years for rerecording brands. Each 10th year after 1921 is the year for rerecording artificial marks and brands used to distinguish and identify the ownership of domestic animals and livestock. The department shall, on the application of a person, firm, or corporation or the transferee of the person, firm, or corporation made in a year which is a year for rerecording marks and brands, rerecord a mark or brand which at the time of the application stands of record in the department in the name of the person, firm, or corporation. A mark or brand which was not originally recorded or rerecorded in the name of the person, firm, or corporation during the rerecording year last preceding the date when the application is filed or originally recorded in the name of the person, firm, or corporation or his or its predecessor or predecessors in interest between the time of the application and the rerecording year last preceding the application, is not of record in the department.

History: En. Sec. 3, Ch. 144, L. 1921; re-en. Sec. 3303, R. C. M. 1921; amd. Sec. 92, Ch. 310, L. 1974; amd. Sec. 27, Ch. 12, L. 1977.

Amendments

The 1974 amendment substituted refer-

ences to "department" throughout the section for references to "general recorder of marks and brands" and made minor changes in phraseology and punctuation.

The 1977 amendment made minor changes in phraseology, punctuation and style.

46-606. (3304) Right of owner of recorded brand. A person, firm, or corporation in whose name a mark or brand is recorded, is entitled to the exclusive use of the mark or brand on the species of animal and in the position designated in the record. A copy of the record certified by the department is prima facie evidence of this right; and the certificate is also prima facie evidence that the person, firm, or corporation entitled to use the mark or brand is the owner of all animals on which it appears in the position and on the species of animal stated in the certificate.

History: En. Sec. 4, Ch. 144, L. 1921; re-en. Sec. 3304, R. C. M. 1921; amd. Sec. 93, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "department" for "general recorder of marks and brands" and made minor changes in phraseology and punctuation.

Ownership of Cattle

Although under this section and section 67-308, prima facie owners of the recorded brand have the same interest in the cattle bearing their brand as shown in brand record, joint ownership of the cattle may be contradicted and overcome

by other evidence under section 93-301-11. *Marshall v. Minlschmidt*, 148 M 263, 419 P 2d 486, 490.

In action by administrator of estate of deceased partner against surviving partners to recover assets transferred by deceased during his last illness, evidence that deceased had a half interest in partnership cattle and failure of defendants to produce any of the partnership records at the trial in the lower court, overcame the prima facie showing of one-third interest in the partnership cattle arising from the recording of the brand in name of three persons. *Marshall v. Minlschmidt*, 148 M 263, 419 P 2d 486, 491.

46-607. (3305) Publication of notice of re-recording brands. Between the period beginning January 1 and ending June 30 in each re-recording year, the department shall publish in at least one (1) issue of at least one (1) newspaper of general circulation in each county of this state, in which a newspaper is published, a notice to the effect that the year is a year for re-recording marks and brands, and that no mark or brand continues of record unless re-recorded. The department shall also mail to each

person, firm, and corporation in whose name a mark or brand stands of record, a similar notice addressed to the person, firm, or corporation at his or its post-office address as shown by the records in the department.

History: En. Sec. 5, Ch. 144, L. 1921; re-en. Sec. 3305, R. C. M. 1921; amd. Sec. 94, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "general recorder of marks and brands" in the first sentence; substituted "the department" for "such recorder's office" at the end of the section; and made minor changes in phraseology and punctuation.

46-609. (3307) Fees for department. The department shall charge and collect \$25 for recording a new mark or brand, for recording a mark or brand transfer, or for rerecording a mark or brand. The department shall charge \$2.50 for a certified copy of a record and a duplicate certificate. All fees collected shall be paid into the earmarked revenue fund for the use of the department. However, not more than 10% of the net rerecording fees after all expenses of rerecording are paid may be expended in any one year except in case of an emergency declared by the governor.

History: En. Sec. 7, Ch. 144, L. 1921; re-en. Sec. 3307, R. C. M. 1921; amd. Sec. 1, Ch. 14, L. 1929; amd. Sec. 1, Ch. 109, L. 1949; amd. Sec. 1, Ch. 65, L. 1959; amd. Sec. 90, Ch. 147, L. 1963; amd. Sec. 1, Ch. 13, L. 1969; amd. Sec. 95, Ch. 310, L. 1974; amd. Sec. 1, Ch. 10, L. 1977.

Amendments

The 1963 amendment substituted "the earmarked revenue fund for the use of the livestock commission" for "the livestock commission fund."

The 1969 amendment substituted a fee of \$10.00 for recording or re-recording marks or brands for fees of \$8.00 for recording and \$4.00 for re-recording.

The 1974 amendment substituted "department" for "general recorder of marks and brands" in the first sentence; substituted "the earmarked revenue fund for the use of the department" for "the earmarked revenue fund for the use of the livestock commission" in the third sentence; and made minor changes in phraseology and punctuation.

The 1977 amendment increased the fee for recording or rerecording from \$10 to \$25; substituted "or brand" at the end of the first sentence for "and brand"; increased the fee for certified copies and duplicate certificates from \$1.00 to \$2.50; and made minor changes in phraseology and style.

46-610. (3308) Repealed.

Repeal

Section 46-610 (Sec. 8, Ch. 114, L. 1921), the repealing clause in the 1921 act, was

repealed by Sec. 201, Ch. 310, Laws of 1974.

CHAPTER 7—INSPECTORS AND DETECTIVES

Section 46-701. Appointment and powers.

46-703. Duties.

46-704. Compensation.

46-705. District officers, detectives and inspectors.

46-706. Brands fraudulently changed.

46-707. Compensation for animals killed.

46-708. Action by dissatisfied owner—costs.

46-709. Commissioners must designate places for loading livestock for inspection, when.

46-701. (3309) Appointment and powers. The department of livestock may appoint stock inspectors and detectives necessary for the protection of the livestock interests of this state. The inspectors and detectives shall take the official oath required by law and shall have similar powers

and authority to those conferred by law on deputy sheriffs. However, they are not entitled to the fees or emoluments awarded by law to deputy sheriffs. The board of livestock shall devise an examination for the qualification of stock inspectors and detectives, and the department may appoint and employ only persons who successfully pass such examination. The board shall promulgate administrative rules for the taking of this examination and define a passing grade.

History: En. Sec. 2970, Pol. C. 1895; re-en. Sec. 1796, Rev. C. 1907; amd. Sec. 1, Ch. 170, L. 1921; re-en. Sec. 3309, R. C. M. 1921; amd. Sec. 1, Ch. 17, L. 1974; amd. Sec. 96, Ch. 310, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 17 and once by Ch. 310. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

The reference to "the department" in the next to last sentence was inserted by the compiler.

Amendments

Chapter 17, Laws of 1974, substituted "board of livestock" for "livestock commission" in the first sentence and added the last two sentences.

Chapter 310, Laws of 1974, substituted "department of livestock" for "livestock commission" in the first sentence and made minor changes in phraseology.

46-702. (3310) Repealed.

Repeal

This section (Sec. 2971, Pol. C. 1895), relating to bonds and oaths of stock inspectors and detectives, was repealed by

Sec. 51, Ch. 177, Laws 1965. For new provisions relating to bonds for state officers and employees, see sec. 6-105 et seq.

46-703. (3311) Duties. The stock inspectors and detectives shall arrest all persons who in their presence violate the stock laws of this state. Every stock inspector and detective, on information that a person has committed an offense against the laws of this state by engaging in illegal branding or theft of stock of or an offense against the laws of this state for the protection of the rights and interests of stock owners, must make the necessary affidavit for the arrest and examination of the person and on a warrant issued for the person immediately arrest the person and bring him before the proper officer and notify the department of his acts.

History: En. Sec. 2972, Pol. C. 1895; re-en. Sec. 1798, Rev. C. 1907; re-en. Sec. 3311, R. C. M. 1921; amd. Sec. 97, Ch. 310, L. 1974; amd. Sec. 53, Ch. 359, L. 1977.

Amendments

The 1974 amendment substituted "de-

partment" for "board" near the end of the section and made minor changes in phraseology and punctuation.

The 1977 amendment substituted "by engaging in illegal branding or theft of stock of" for "in feloniously branding or stealing stock"; and made minor changes in punctuation.

46-704. (3312) Compensation. The stock inspectors and detectives are under the exclusive control and direction of the department. They must be paid for their services in the amount which the department determines.

History: En. Sec. 2973, Pol. C. 1895; re-en. Sec. 1799, Rev. C. 1907; re-en. Sec. 3312, R. C. M. 1921; amd. Sec. 91, Ch. 147, L. 1963; amd. Sec. 98, Ch. 310, L. 1974.

Amendments

The 1963 amendment substituted "commission" for "board" in two places.

The 1974 amendment rewrote this section which read: "The stock inspectors and detectives are under the exclusive control and direction of the commission, and must be paid for their services such sums as may be agreed upon by the commission, but in no case must they receive any mileage."

46-705. (3315) District officers, detectives and inspectors. The stock inspectors and detectives are district officers, and the department must designate the district in which the inspectors and detectives serve, and the district must be designated in their commissions.

History: En. Sec. 2991, Pol. C. 1895; re-en. Sec. 1800, Rev. C. 1907; re-en. Sec. 3313, R. C. M. 1921; amd. Sec. 99, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "department" for "board."

46-706. (3314) Brands fraudulently changed. Whenever a mark or brand upon any neat cattle, horse, or other animal has been fraudulently altered, obliterated, or defaced so that the original mark or brand cannot be determined through the external inspection thereof, any stock inspector or sheriff may seize and kill the animal to ascertain the mark or brand so altered or defaced. Payment equal to the fair market value of the live animal shall be made after proper ownership is determined.

History: En. Sec. 2974, Pol. C. 1895; re-en. Sec. 1801, Rev. C. 1907; re-en. Sec. 3314, R. C. M. 1921; amd. Sec. 1, Ch. 15, L. 1977.

Amendments

The 1977 amendment substituted the last sentence for "upon paying to the owner the value of said animal"; and made minor changes in phraseology and punctuation.

Immunity from Liability

Employees of the state livestock commission who, with probable cause, seized and killed animals to establish whether brand had been altered or defaced are not liable for wrongful conversion. *Johnson v. Furgeson*, 158 M 170, 489 P 2d 1032.

46-707. (3315) Compensation for animals killed. The value of the animal taken and killed shall be determined by three disinterested parties living in the vicinity where the animal is seized. The amount of money awarded to the owner is full compensation for the loss of the animal. All money disbursed under this section shall be paid out of the department's funds in the earmarked revenue fund, and whenever possible the dead bodies of the animals killed shall be disposed of for cash, and the proceeds turned into the fund.

History: En. Sec. 2975, Pol. C. 1895; re-en. Sec. 1802, Rev. C. 1907; re-en. Sec. 3315, R. C. M. 1921; amd. Sec. 92, Ch. 147, L. 1963; amd. Sec. 100, Ch. 310, L. 1974.

Amendments

The 1963 amendment substituted "livestock commission moneys in the earmarked revenue fund" for "livestock commission fund."

The 1974 amendment substituted "disbursed under this section" for "disbursed as herein provided"; substituted "department's funds in the earmarked revenue fund" for "livestock commission moneys in the earmarked revenue fund"; and made minor changes in phraseology and punctuation.

46-708. (3316) Action by dissatisfied owner—costs. Should the owner of the animal so seized and killed feel dissatisfied with the valuation made, he may maintain an action against the department or, if the animal is seized by a sheriff, against that sheriff's county, and should he fail to recover damages in any greater amount than that allowed under 46-707, he shall bear all costs that may be incurred in the maintenance of the action.

History: En. Sec. 2976, Pol. C. 1895; re-en. Sec. 1803, Rev. C. 1907; re-en. Sec. 3316, R. C. M. 1921; amd. Sec. 2, Ch. 15, L. 1977.

Amendments

The 1977 amendment substituted "the

department or, if the animal is seized by a sheriff, against that sheriff's county" for "said officer seizing said animal"; and made minor changes in phraseology and style.

46-709. Commissioners must designate places for loading livestock for inspection, when. The board of county commissioners must, at the request of the department, designate within their respective counties certain convenient places, and provide suitable facilities for unloading and loading of livestock for inspection purposes.

History: En. Sec. 1, Ch. 74, L. 1939; amd. Sec. 1, Ch. 211, L. 1947; amd. Sec. 101, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "department" for "Montana livestock commission" and made a minor change in punctuation.

CHAPTER 8—INSPECTION OF LIVESTOCK BEFORE SALE, REMOVAL OR SHIPMENT

Section 46-801. [Transferred.]

46-801.1. Definitions.

46-801.2. Inspection of livestock before change of ownership or removal from county—transportation permits.

46-801.3. Section 46-801.2 does not apply in certain instances.

46-801.4. Inspection for livestock removed from this state.

46-801.5. Importation of livestock—notice to department—inspection.

46-802. Duties of state stock inspectors and deputy stock inspectors—department authorized to adopt rules.

46-803. Seizure of livestock, retention of livestock, sale, disposal of proceeds.

46-804. Fees for inspection and livestock transportation permits.

46-806. Penalties for violations of act.

46-808. Removal of livestock from state without inspection—penalty—exception.

46-809. Order requiring sheep removal permits—petition by sheep raisers.

46-810. Permit required for removal of sheep after order—violation as misdemeanor.

46-811. Form and issuance of permits—fee.

46-812. Publication of notice of sheep removal permit order.

46-813. Removal of permit requirement.

46-801. [Transferred.]

Compiler's Notes

Section 102, Ch. 310, Laws of 1974 re-numbered this section as sec. 46-801.2.

46-801.1. Definitions. Unless the context requires otherwise, in 46-801.2 through 46-806, the following definitions apply:

(1) "Livestock" means a cow, ox, bull, stag, calf, steer, heifer, horse, mule, mare, colt, foal, or filly.

(2) "State stock inspector" means an employee of the department of livestock designated by the department as a state stock inspector.

(3) "Deputy state stock inspector" means a person designated by the department as a deputy state stock inspector, who does not receive a salary or compensation from the department.

(4) "Person" means an individual, partnership, corporation, association, or any entity not enumerated capable of owning or controlling livestock.

History: En. 46-801.1 by Sec. 103, Ch. 310, L. 1974; amd. Sec. 1, Ch. 41, L. 1977.

Amendments

The 1977 amendment added subdivision (4); and made minor changes in phraseology, punctuation and style.

46-801.2. Inspection of livestock before change of ownership or removal from county—transportation permits. (1) Except as otherwise provided in this act, it is unlawful to remove or cause to be removed from a county in this state any livestock or to transfer ownership by sale or otherwise, or for an intended purchaser or his agent to take possession of any such animal subject to title passing upon meeting or satisfaction of any conditions unless the livestock has been inspected for brands by a state stock inspector or deputy state stock inspector and a certificate of the inspection has been issued in connection with and for the purpose of the transportation or removal or of such change of ownership as provided in this act. The inspection must be made in daylight, provided, however, that the change of ownership inspection requirements of this subsection shall not apply when such sale or change of ownership transaction involves five or less such animals.

(2) It is unlawful to sell or offer for sale at a livestock market any livestock originating within any county in this state in which a livestock market is maintained, or transported under a market consignment permit until the livestock has been inspected for marks and brands by a state stock inspector, as provided in this act.

(3) It is unlawful to remove or cause to be removed any livestock from the premises of a livestock market in this state unless the livestock has been released by a state stock inspector and a certificate of release for the livestock has been issued in connection with and for the purpose of the removal from the premises of the livestock market, as provided in this act. The release obtained pursuant to this subsection will permit the movement of the livestock so released directly to the destination shown on the certificate.

(4) The person in charge of livestock being removed from a county in this state, where inspection thereof is required by this act or where change of ownership has occurred or when moved under a market consignment permit or a market release certificate shall have in his possession the certificate of inspection, market consignment permit, transportation permit, or market release certificate issued in connection therewith and shall exhibit the certificate to any sheriff, deputy sheriff, constable, highway patrolman, state stock inspector, or deputy state stock inspector upon request. Section 46-803 shall be extended to livestock transported or sold under the above-mentioned permits.

(5) The following transportation permits may be issued:

(a) If a saddle, work, or show horse is being transported from county to county in this state by the owner for his personal use or business, or where a purebred cow is being transported from county to county in this

state by its owner for show purposes, and where there is no change of ownership, the inspection certificate as required by this act, may be endorsed as to the purpose and extent of transportation by the inspector issuing the certificate in order to serve as a travel permit in this state for a period not to exceed 1 year for the horse or cow described thereon. The permit becomes void upon any transfer of ownership or if the horse or cow are to be removed from the state. In such instances an inspection must be secured for removal and the endorsed certificate surrendered.

(b) The owner of a saddle, work, or show horse may apply for a permanent transportation permit valid for both interstate and intrastate transportation of the horse until there is a change of ownership. To obtain a permit a horse must have either a registered brand that has been legally cleared, or a lip tattoo, or the owner must present proof of ownership to a state stock inspector. A written application, on forms to be provided by the department, must be completed by the owner and presented to a state stock inspector together with a \$5 permit fee for each horse. The application shall contain a thorough physical description of the horse and list all brands and tattoos carried by the horse.

Upon approval of the application by a state stock inspector, a permanent transportation permit shall be issued by the department to the owner for each horse and such permit shall be valid for the life of the horse. If there is a change of ownership in a horse the permit shall automatically become void. The permit must accompany the horse for which it was issued at all times while the horse is in transit. This permit shall be in lieu of other permits and certificates required under the provisions of this section. The state of Montana shall recognize as valid permanent transportation permits issued in other jurisdictions to the owner of a saddle, work, or show horse subsequently entering the state. Such a permit shall be automatically void upon a change of ownership.

(c) When livestock owned by and bearing the registered brand of a bona fide rodeo producer are being transported from county to county in this state by the owner for rodeo purposes, and where there is no change of ownership, the inspection certificate required by this section may be endorsed as to the purpose and extent of transportation by the inspector issuing the certificate in order to serve as a travel permit in this state for the livestock described thereon. The certificate is effective only between April 1 and October 31 of the year for which it is issued. The certificate shall be issued by a state stock inspector.

(d) An owner of livestock or his agent may be issued a transportation permit allowing the movement of his livestock into an immediately adjoining county and return when the livestock are being moved for grazing purposes and when they are being moved to and from land owned or controlled by the owner of the livestock or his agent. The permit is valid for 6 months and must be issued by a state stock inspector. The fee for the permit is \$5, which shall be paid to the state stock inspector at the time the permit is issued and remitted by him to the department for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the department. This permit may be used in lieu of the

inspection and certificate required by this section for movement of livestock across a county line.

History: En. Sec. 1, Ch. 59, L. 1943; amd. Sec. 1, Ch. 176, L. 1945; amd. Sec. 1, Ch. 210, L. 1947; amd. Sec. 1, Ch. 110, L. 1949; amd. Sec. 1, Ch. 184, L. 1953; amd. Sec. 1, Ch. 142, L. 1957; amd. Sec. 1, Ch. 9, L. 1961; amd. Sec. 1, Ch. 54, L. 1969; amd. Sec. 1, Ch. 149, L. 1971; amd. Sec. 1, Ch. 247, L. 1973; Sec. 46-801, R. C. M. 1947; amd. and redes. 46-801.2 by Sec. 102, Ch. 310, L. 1974; amd. Sec. 1, Ch. 316, L. 1975; amd. Sec. 1, Ch. 312, L. 1977; amd. Sec. 1, Ch. 482, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 312 and once by Ch. 482. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

The 1969 amendment added subsections (7) and (8) which read "(7) Except as provided for in section [subsections] 6(a) and 6(b) of this act [section], nothing contained in this chapter shall authorize or permit any person to remove or cause to be removed any animal or animals from any county in this state to a location outside of the state of Montana on the hoof, or by any means or manner whatsoever, unless such animal or animals shall have been inspected for brands by a state stock inspector or deputy state stock inspector and certificate for such inspection shall have been issued in connection with and for the purpose of such transportation or removal as in this act provided. (8) It shall be the duty and responsibility of any person in possession of livestock to secure such inspection of livestock as provided in this chapter before any livestock shall leave the state of Montana."

The 1971 amendment inserted "or to transfer ownership by sale or otherwise to a feeder or purchaser" near the middle of subsection (1); inserted "or where change of ownership to a feeder purchaser has occurred as in this act defined" in the first half of subsection (4); inserted "or sold to a feeder purchaser" near the end of subsection (4); and added a subsection (9) which read: "The following words and phrases, as used in this act shall have the following meaning, unless the context otherwise requires: (a) 'Feedlot' means any confined feeding area or enclosure which is not normally used for raising crops within which livestock are fed for marketing purposes. (b) 'Feeder purchaser' means any individual, partner-

ship or corporation which confines or contracts to confine to a feedlot, livestock to be fed for marketing purposes."

The 1973 amendment deleted "to a feeder purchaser" in subsections (1) and (4) in the material inserted by the 1971 amendment; inserted "or for an intended purchaser or his agent to take possession of any such animal subject to title passing upon meeting or satisfaction of any conditions" near the middle of subsection (1); inserted "or of such change of ownership" near the end of the first sentence of subsection (1); added the proviso to the end of the second sentence of subsection (1); divided subsection (5) into subdivisions; inserted the preliminary phrase of subsection (5); inserted subdivision (5)(b); substituted "subsection (1)" in the introductory phrase of subsection (6) for "section one of this act [section]"; substituted "subsections 5(b), 6(a) and 6(b) of this section" at the beginning of subsection (7) for "section [subsections] 6(a) and 6(b) of this act [section]"; and deleted the subsection (9) added by the 1971 amendment.

The 1974 amendment substituted "livestock" for "cow, ox, bull, stag, calf, steer, heifer, horse, mule, mare, colt, foal or filly" in the first sentences of subsections (1) to (4); inserted "or where a purebred cow is being transported from county to county in this state by its owner for show purposes" in the first sentence of subdivision (5)(a); substituted "horse or cow" for "horse or horses" in two places in subdivision (5)(a); deleted subdivision (5)(c), pertaining to transport of registered purebred cattle by the owner for show purposes; deleted subsection (6), for which see parent volume, 1973 amendment note, and new section 46-801.3; deleted subsections (7) and (8) added by the 1969 amendment (and see new section 46-801.4); and made minor changes in punctuation and phraseology.

The 1975 amendment added subdivision (5)(c).

Chapter 312, Laws of 1977, inserted "or transportation permit" in the first sentence of subsection (4); added subdivision (5)(d); and made minor changes in punctuation and style.

Chapter 482, Laws of 1977, substituted "released by a state stock inspector and a certificate of release" in the first sentence of subsection (3) for "inspected for marks and brands by a state stock inspector and an inspection certificate"; added the second sentence of subsection (3); inserted two references to a market release certificate in subsection (4); and

made minor changes in phraseology, punctuation and style.

vided the act should be in effect from and after its passage and approval. Approved April 8, 1975.

Effective Date

Section 2 of Ch. 316, Laws 1975 pro-

46-801.3. Section 46-801.2 does not apply in certain instances. Section 46-801.2 does not apply to:

(1) Livestock being transported through the state in interstate commerce without leaving the custody of the carrier;

(2) Livestock transported by railroad consigned to and which, without leaving the custody of the carrier, does reach a market at which the department of livestock regularly maintains a stock inspector, and a loading tally has been filed by the shipper with the carrier as provided in section 46-1008;

(3) Livestock when driven on the hoof and not moved by means of any motor vehicle, trailer, horse-drawn vehicle, railroad car or boat, by the owner from one county to the next adjoining county within the state onto land owned or controlled by the owner of livestock so moved for the purpose of pasturing, feeding, or changing the range thereof;

(4) Livestock when driven on the hoof or moved by means of a motor vehicle, trailer, horse-drawn vehicle, railroad car or boat, by the owner from one county to the next adjoining county within this state onto land owned or controlled by the owner of livestock without leaving land owned or controlled by the owner when moved for the purpose of pasturing, feeding, or changing the range thereof;

(5) Livestock when driven on the hoof from one county to an adjoining county within this state for the purpose of shipment by railroad or delivery to a licensed public market by a person who has been the owner of that livestock for a period of at least three (3) months;

(6) Livestock from one county to be consigned to, and which actually reach by means other than railroad, a licensed livestock market located in another county of the state at which the department regularly maintains a stock inspector, and for which a market consignment permit has been obtained in a manner provided by law;

(7) Livestock when hauled by truck or trailer from one county to an adjoining county within the state for the purpose of shipment by railroad at which shipping point the department maintains a stock inspector or where a deputy state stock inspector is available, and for which a transportation permit has been obtained in the manner provided by law.

History: En. 46-801.3 by Sec. 104, Ch. 310, L. 1974.

46-801.4. Inspection for livestock removed from this state. Except as provided for in subsections (1) and (2) of section 46-801.3 and subsections (3) and (5)(b) of section 46-801.2, nothing contained in this chapter authorizes or permits a person to remove or cause to be removed livestock from this state to a location outside of this state, unless the livestock has been inspected for brands by a state stock inspector or deputy state stock

inspector and a certificate for the inspection has been issued in connection with and for the purpose of the transportation or removal as provided in this chapter.

History: En. 46-801.4 by Sec. 105, Ch. 310, L. 1974; amd. Sec. 2, Ch. 482, L. 1977.

sections (3) and (5)(b) of section 46-801.2" for "subsection (5)(b) of section 46-801.2" near the beginning of the section.

Amendments

The 1977 amendment substituted "sub-

46-801.5. Importation of livestock—notice to department—inspection.

(1) Except as provided in subsections (2) and (3) of this section, any person owning livestock imported into this state or his agent must notify the department or a salaried employee of the department of the number, breed, type, and age of the livestock, their location, and the purpose for which they have been brought into the state. Such notification shall be made within 48 hours after the arrival of the livestock in the state. Livestock so moved may not be commingled with any livestock already in Montana until inspected for brands and marks in daylight by a state stock inspector or deputy state stock inspector. The fees for this inspection shall be the same as those imposed for county line or change of ownership inspections. The fees paid to state stock inspectors shall be remitted to the department for deposit in the earmarked revenue fund for the use of the department.

(2) Livestock consigned to a licensed livestock market or for immediate slaughter to a licensed slaughter facility at which pre-slaughter inspection is maintained are exempt from the requirements of this section.

(3) Livestock moved between Montana and an adjacent state for graze on a regular basis and as part of the usual operation of a farm or ranch shall be exempt from the notice and inspection requirements of this section provided a transportation permit for the entry of the livestock into Montana has been obtained by the owner or his agent from a state stock inspector prior to the entry of the livestock into Montana. The fee for the permit shall be \$5 which shall be remitted by the department to the state treasury for credit to the earmarked revenue account of the department. The department shall provide by rule for the issuance and control of transportation permits authorized by this subsection.

History: En. 46-801.5 by Sec. 2, Ch. 41, L. 1977.

stock imported into the state and requiring a brand inspection of such livestock after arrival in Montana but prior to being intermingled with native stock; amending section 46-801.1, R. C. M. 1947.

Title of Act

An act requiring notice to be given the department of livestock of any live-

46-802. Duties of state stock inspectors and deputy stock inspectors—department authorized to adopt rules. (1) State stock inspectors and deputy state stock inspectors, upon the application of the owner, or the duly authorized agent of the owner of livestock, shall inspect the livestock which are intended for sale, removal or shipment and issue his certificate of inspection therefor, if it appears with reasonable certainty that the applicant is the owner of the livestock or has the lawful right to the possession thereof.

(2) The inspection shall include an examination of the livestock and all marks and brands thereon to identify the livestock. The certificate of inspection shall be made in triplicate and shall specify the date of inspection, the place of origin and place of destination of the shipment, the name and address of the owner of the livestock or of the applicant for inspection, and the purchaser or transferee, if applicable, the class of the animal, the marks and brands, if any, upon the animal, and any other information and upon the form of certificate as the department may from time to time require. One copy of the certificate shall be retained by the inspector, one copy shall be furnished by the inspector to the owner or shipper of the livestock, and one copy shall be filed by the inspector with the department within 5 days.

(3) If it appears with reasonable certainty that the applicant is the owner of the livestock or has the lawful right to the possession thereof, the state stock inspectors or deputy state stock inspectors or any sheriff or deputy sheriff, upon application of an owner or his agent of the livestock to be consigned and delivered directly to a licensed livestock market located in another county of the state, or delivered directly to a shipping point duly approved by the department where a livestock inspector is available for inspection, in an adjoining county, shall issue to the person a separate market consignment permit or transportation permit for each owner when the owner, or owners, or their duly authorized agents sign the permit certifying the brands, description and destination of the livestock. The market consignment permit or transportation permit shall be made in triplicate, shall specify the date and time issued, the place of origin and place of destination of the shipment, the name and address of the owner of the livestock and the name and address of the person actually transporting the livestock if different than the owner, the kind of livestock, the marks and brands, if any, upon the livestock, a description of the vehicle or vehicles to be used to transport the livestock to include the license number of the vehicles and any other information and upon the form of permit as the department may from time to time require. Any permit so issued shall be good for shipment within thirty-six (36) hours from date and time of issue, however, permits not used within this time limitation must be returned to the issuing officer to be canceled and to release the permittee from performance. One (1) copy of the permit shall be retained by the inspector or sheriff's office, one (1) copy shall be filed by the inspector or sheriff's office with the department within five (5) days of the date of issue, and one (1) copy shall be furnished by the inspector or sheriff's office to the owner or shipper of the livestock which copy of the permit shall accompany the shipment and be delivered to the state stock inspector at the livestock market or shipping point where the livestock is delivered.

(4) Upon application of an owner or his agent, when it appears with reasonable certainty that the applicant is the owner of the livestock or has lawful right to the possession thereof, a state stock inspector shall issue a transportation permit which will allow the movement of the livestock into an immediately adjoining county to land owned or controlled by the owner or his agent for purposes of grazing. The transportation

permit shall state the breed, description, marks and brands if any, head count, and description of land to and from which the livestock will be moved. The permit will be valid for 6 months. A state stock inspector may enter the premises where livestock so moved have been transported and inspect any livestock moved under the transportation permit or any livestock commingled therewith. Any person transporting strays or livestock not lawfully under his control is guilty of a misdemeanor and punishable as provided in 46-806.

(5) The department may adopt rules necessary to carry out this act.

History: En. Sec. 2, Ch. 59, L. 1943; amd. Sec. 2, Ch. 184, L. 1953; amd. Sec. 2, Ch. 142, L. 1957; amd. Sec. 1, Ch. 35, L. 1969; amd. Sec. 2, Ch. 149, L. 1971; amd. Sec. 2, Ch. 247, L. 1973; amd. Sec. 106, Ch. 310, L. 1974; amd. Sec. 2, Ch. 312, L. 1977.

Amendments

The 1969 amendment inserted "duly approved * * * available for inspection" after "shipping point" in the third paragraph and added the last paragraph.

The 1971 amendment inserted "sale to a feeder purchaser" in the first paragraph; and inserted "and the purchaser or transferee, if applicable" in the second sentence of the second paragraph.

The 1973 amendment deleted "to a feeder purchaser" after "intended for sale" in the first paragraph.

The 1974 amendment inserted the numerical subsection designations at the beginning of the paragraphs; substituted "department" for "Montana livestock commission," "livestock commission," and "secretary of the livestock commission at Helena, Montana" in the caption and throughout the section; substituted "livestock" for "animal referred to in section 46-801," "animals," "animal or animals," etc. throughout the section; and made minor changes in phraseology and punctuation.

The 1977 amendment designated the second and third paragraphs of subsection (2) as subsections (3) and (5), respectively; inserted subsection (4); and made minor changes in phraseology and style.

46-803. Seizure of livestock, retention of livestock, sale, disposal of proceeds. (1) All state stock inspectors inspecting any livestock, either before or after shipment or removal from any county in this state or upon a change of ownership, may inspect and seize either at the point of sale, shipment, or destination or en route any livestock or proceeds thereof which the inspector believes is stolen or upon which brands have been altered or obliterated or which does not conform to the description contained on the tally sheet furnished by the shipper thereof or to the description contained in any certificate of inspection or release issued before shipment or removal of the livestock.

(2) Upon taking possession of livestock under this act, a state stock inspector may retain the livestock in his possession for 15 days to make further investigation relative to its ownership. A state stock inspector may either at once or at any time within 15 days sell the livestock at a licensed livestock market or in the open market for the best available price and remit the proceeds, less the cost of keeping and sale, to the department together with a full description of the livestock sold, giving marks and brand, if any, and a statement of the reason for the seizure and sale. The proceeds shall be deposited by the department with the state treasurer and credited to the department fund, where it is subject to claim by the owner of the livestock in the same manner and for the same length of time as is provided by law for the making of claims for moneys arising from the sale of stray stock.

History: En. Sec. 3, Ch. 59, L. 1943; amd. Sec. 108, Ch. 147, L. 1963; amd. Sec. 3, Ch. 149, L. 1971; amd. Sec. 3, Ch. 247, L. 1973; amd. Sec. 107, Ch. 310, L. 1974; amd. Sec. 3, Ch. 482, L. 1977.

Amendments

The 1963 amendment substituted "agency fund" for "stock estray fund" in the last sentence of the second paragraph; and substituted "for moneys arising from the sale of stray stock" for "against said fund" at the end of the section.

The 1971 amendment inserted "or upon a change of ownership, to a feeder purchaser" in the first paragraph; and inserted "sale" before "shipment or destination" in the first paragraph.

The 1973 amendment deleted "to a feeder purchaser" following "a change of ownership" in the first paragraph.

The 1974 amendment inserted the nu-

merical subsection designations at the beginning of the paragraphs; substituted "department" for "livestock commission" in two places in subsection (2); substituted "department fund" for "agency" in the last sentence of subsection (2); and made minor changes in phraseology and punctuation.

The 1977 amendment inserted "or release" near the end of subsection (1) after "certificate of inspection"; and made minor changes in punctuation and style.

Liability of Inspectors

Employees of the state livestock commission who, with probable cause, seized and killed animals to establish whether brand had been altered or defaced, were simply following their duty under this section and cannot be sued for wrongful conversion. *Johnson v. Furgeson*, 158 M 170, 489 P 2d 1032.

46-804. Fees for inspection and livestock transportation permits. (1) For the service of inspection before removal from a county or before change of ownership, the inspector making the inspections shall receive 25 cents per head for 12 head or less, or \$3 for 12 head to 20 head and shall receive 20 cents per head for each head over 20 head. For the issuance of a market consignment permit or transportation permit (other than a permanent permit) before removal from a county, the inspector, sheriff, or deputy sheriff issuing the permits shall receive 25 cents for each permit issued for 12 head or less; 50 cents for each permit for 12 to 30 head and \$1 for each permit issued for over 30 head and shall receive in addition his necessary actual expenses, to be paid by the owner or the person for whom the inspection is made or permit issued. For the issuance of a permanent horse transportation permit, the state stock inspector taking the application for permit shall receive \$5 per head for each permit issued. All inspection and permit fees and expenses shall be collected by the inspector, sheriff, or deputy sheriff at the time of inspection or issuance of permit, and all the fees and expenses collected by a deputy state stock inspector, sheriff, or deputy sheriff shall be retained by him, and all such fees and expenses collected by a state stock inspector shall be sent by him to the department for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the department.

(2) For the service of inspection before livestock is sold or offered for sale at a licensed livestock market, a state stock inspector making the inspection shall receive 20 cents per head for an animal originating within the county in the state in which the market is maintained or transported under a market consignment permit and 10 cents per head for an animal previously inspected before removal from a county as herein provided. All fees shall be paid by the owner or by the person for whom the inspection is made. For releasing an animal so that it may be removed from the premises of a licensed livestock market, the state stock inspector making the release shall receive 20 cents per head from the owner or the person for whom the release is made. All fees for inspection and

release at the market shall be collected by the state stock inspector making the inspection or release at the time the inspection or release is made and shall be sent by him to the department for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the department.

(3) All inspection and release fees and expenses shall be paid to the department for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the department. State stock inspectors shall be paid for their services and receive their expenses as fixed by the department.

History: En. Sec. 4, Ch. 59, L. 1943; amd. Sec. 1, Ch. 106, L. 1949; amd. Sec. 3, Ch. 184, L. 1953; amd. Sec. 3, Ch. 142, L. 1957; amd. Sec. 93, Ch. 147, L. 1963; amd. Sec. 4, Ch. 149, L. 1971; amd. Sec. 4, Ch. 247, L. 1973; amd. Sec. 108, Ch. 310, L. 1974; amd. Sec. 4, Ch. 482, L. 1977.

Amendments

The 1963 amendment substituted references to "the earmarked revenue fund for the use of the livestock commission" throughout the section for "the livestock commission fund."

The 1971 amendment inserted "or before change of ownership to a feeder purchaser" in the first sentence of subsection (a).

The 1973 amendment deleted "to a feeder purchaser" after "change of ownership" in the first sentence of subsection (a); reduced the maximum number inspected for a \$3 fee from thirty to twenty head in subsection (a); increased the fee from 10 cents to 20 cents per head for each head over twenty in subsection (a); inserted "(other than a permanent permit)" in the second sentence of subsection (a); and inserted the provision for issuance of a permanent horse transportation permit in subsection (a).

The 1974 amendment changed the subsection designations from small letters to numerals; substituted references to "department" throughout the section for references to "livestock commission"; substituted references to "the earmarked revenue fund for the use of the department" throughout the section for references to "the earmarked revenue fund for the use of the livestock commission"; deleted a policy declaration at the beginning of subsection (3); substituted "receive their expenses as fixed by the department" for "receive for their expenses only such sums as shall be agreed upon by the livestock commission of the state of Montana and fixed and determined by the state board of examiners" at the end of subsection (3); and made minor changes in phraseology and punctuation.

The 1977 amendment substituted "licensed livestock market" two places in subsection (2) for "licensed public market"; substituted "releasing" and "release" for "inspecting" and "inspection" in the third sentence of subsection (2); inserted references to release in the fourth sentence of subsection (2) and the first sentence of subsection (3); and made minor changes in phraseology, punctuation and style.

46-805. Repealed.

Repeal

Section 46-805 (Sec. 5, Ch. 59, L. 1943), defining state stock inspector and deputy

state stock inspector, was repealed by Sec. 201, Ch. 310, Laws of 1974. For present definitions, see section 46-801.1.

46-806. Penalties for violations of act. (1) A person who removes or causes to be removed from a county in this state, livestock (a) without having the livestock inspected before removal where an inspection is required by law; (b) without obtaining a market consignment permit or transportation permit, where the permits are obtainable by law; (c) and does obtain a market consignment permit for livestock but does not deliver the livestock transported thereunder to the livestock market designated in the market consignment permit; (d) and does obtain a transportation permit for the livestock but does not deliver the livestock transported thereunder to the destination as shown on the transportation permit and fails to have the livestock so transported inspected at the point of destina-

tion or does not file a loading tally with the carrier as provided in 46-1008; is guilty of a misdemeanor and shall be punishable as provided in subsection (6) of this section.

(2) A person who sells livestock or offers such for sale at a livestock market without having the livestock inspected or removes livestock or causes such to be removed from a livestock market, without obtaining a release is guilty of a misdemeanor and is punishable as provided in subsection (6) of this section.

(3) A person who ships by railroad carrier and the railroad carrier transporting livestock for which a loading tally has been filed as provided by 46-1008 and for which shipment of livestock an inspection has not been made, and after shipment, causes or permits the livestock to leave the custody of the railroad carrier at a place other than where this state regularly maintains a stock inspector, is guilty of a misdemeanor and shall be punishable as provided in subsection (6) of this section.

(4) A person who has in his charge livestock being removed from a county in the state for which an inspection certificate, a market consignment permit, or a market release certificate has been issued, and fails to have in his possession accompanying the livestock the inspection certificate, market consignment permit, or a market release certificate as issued for the livestock; or who, having the certificate of inspection, market consignment permit, or market release certificate, fails to exhibit them to a sheriff, deputy sheriff, constable, highway patrolman, state stock inspector, or deputy state stock inspector at his request is guilty of a misdemeanor and is punishable as provided in subsection (6) of this section.

(5) A person violating any of the provisions of this act is guilty of a misdemeanor and is punishable as provided in subsection (6) of this section.

(6) Upon conviction, a person, firm, association, or corporation under this act, shall be fined not less than \$50 or more than \$500 or imprisoned in the county jail for a period of not more than 6 months, or both fined and imprisoned. Of all fines assessed and collected under this act, 50% shall be paid into the state treasury and credited to the earmarked revenue fund for the use of the department, and 50% shall be paid into the general fund of the county in which the conviction occurred.

History: En. Sec. 6, Ch. 59, L. 1943; amd. Sec. 4, Ch. 184, L. 1953; amd. Sec. 4, Ch. 142, L. 1957; amd. Sec. 94, Ch. 147, L. 1963; amd. Sec. 109, Ch. 310, L. 1974; amd. Sec. 5, Ch. 482, L. 1977.

Amendments

The 1963 amendment substituted "the earmarked revenue fund for the use of the livestock commission" for "the livestock commission fund" in subsection (b).

The 1974 amendment changed the subsection designations from small letters to numerals; substituted small letters for numerals in the designations of items in subsection (1); substituted references to "livestock" for references to "animal or

animals of the class referred to in section 46-801" and "animal or animals" throughout the section; substituted "provided in subsection (6) of this section" for "hereinafter provided" at the end of subsections (1) to (5); substituted "the earmarked revenue fund for use of the department" for "the earmarked revenue fund for the use of the livestock commission" in subsection (6); and made minor changes in phraseology and punctuation.

The 1977 amendment inserted "without obtaining a release" in subsection (2); inserted "or a market release certificate" throughout subsection (4); and made minor changes in phraseology, punctuation and style.

46-807. Repealed.**Repeal**

Section 46-807 (Sec. 7, Ch. 59, L. 1943), relating to the continuance of actions

pending on the effective date of Ch. 59, Laws of 1943, was repealed by Sec. 201, Ch. 310, Laws of 1974.

46-808. Removal of livestock from state without inspection—penalty—exception. Any person, other than the owner or his agent or employee, who, without consent of the owner, removes or causes to be removed from this state any cow, ox, bull, stag, calf, steer, heifer, horse, mule, mare, colt, foal, or filly without having the same inspected where such inspection is required by law is guilty of a felony and shall be punished by a fine of not more than \$2,000, by imprisonment in the state prison for a term of not more than 3 years, or by both such fine and imprisonment. The provisions of this section do not apply to any person who removes from this state any animal specified by this section, for the purpose of obtaining emergency treatment for such animal by a licensed veterinarian.

History: En. Sec. 1, Ch. 173, L. 1961; amd. Sec. 28, Ch. 12, L. 1977.

Amendments

The 1977 amendment deleted "exclud-

ed from this act" at the end of the section; and made minor changes in phraseology, punctuation and style.

46-809. Order requiring sheep removal permits—petition by sheep raisers. The department shall, within sixty (60) days of the filing of a petition signed by not less than fifty-one per cent (51%) of the sheep raisers owning not less than fifty-one per cent (51%) of the sheep in a county of this state requesting such action, make an order requiring a permit for the removal of any sheep from the county.

History: En. Sec. 1, Ch. 135, L. 1963; amd. Sec. 110, Ch. 310, L. 1974.

Title of Act

An act to authorize the Montana livestock commission, upon petition of fifty-one per cent (51%) of the sheep raisers owning fifty-one per cent (51%) of the sheep in any county of the state, to require a permit for the removal of sheep from such county; providing for the

form and issuance of such permits; providing that it shall be a misdemeanor to remove sheep from such a county without a permit; and providing for the manner of removing the requirement for such a permit.

Amendments

The 1974 amendment substituted "department" for "livestock commission" and made minor changes in phraseology.

46-810. Permit required for removal of sheep after order—violation as misdemeanor. Effective on the date of the department's order which requires a permit for the removal of sheep from a county, it is unlawful for a person to remove sheep from the county without a permit. A person who removes, authorizes, or assists in the removal of sheep from the county without a permit is guilty of a misdemeanor.

History: En. Sec. 2, Ch. 135, L. 1963; amd. Sec. 111, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment's order" for "order of the livestock commission" and made minor changes in phraseology and punctuation.

46-811. Form and issuance of permits—fee. Before making an order under this act, the department must provide for the form of the permit

and for issuance of the permits by livestock inspectors in the affected county. Fee for issuance of the permit is fifty cents (\$.50).

History: En. Sec. 3, Ch. 135, L. 1963; **Amendments**
amd. Sec. 112, Ch. 310, L. 1974.

The 1974 amendment substituted "department" for "livestock commission" and made minor changes in phraseology.

46-812. Publication of notice of sheep removal permit order. Before the effective date of an order made under this act, the department must publish a notice containing the text and effective date of the order at least three (3) times in a paper of general circulation in the county and must have a copy of the order mailed to every sheep raiser in the county.

History: En. Sec. 4, Ch. 135, L. 1963; **Amendments**
amd. Sec. 113, Ch. 310, L. 1974.

The 1974 amendment substituted "department" for "commission" and made minor changes in phraseology.

46-813. Removal of permit requirement. On receipt of a petition signed in the manner specified in section 46-809, requesting the removal of the permit requirement, the department shall, at its next meeting, order the permit requirement removed.

History: En. Sec. 5, Ch. 135, L. 1963;
amd. Sec. 114, Ch. 310, L. 1974.

tion 46-809" for "section 1 of this act"; substituted "department" for "livestock commission"; and made minor changes in phraseology.

Amendments

The 1974 amendment substituted "sec-

CHAPTER 9—LIVESTOCK MARKETS—INSPECTION AND QUARANTINE —LICENSE AND BONDING

Section 46-902. Inspection of public markets.

46-903. Quarantine of diseased animals—ownership of animals to be determined—proceeds from sale of stock of unknown owner.

46-906. Definitions.

46-906.1. Board regulation of certain types of nonmarket sales of livestock.

46-907. Regulation of livestock markets.

46-907.1. Occasional off-premises sales may be authorized.

46-908. Certificate to operate livestock market required—application, contents of—fee.

46-909. Hearing and procedure—limitation upon issuance of certificates.

46-909.1. Transfer of certificate.

46-911. Fee.

46-912. Bond required—conditions.

46-913. Records kept by livestock markets.

46-914. Rules—board to adopt.

46-915. Cancellation or suspension of certificates—grounds.

46-916. Investigation of actions of livestock markets—hearing of complaints—additional powers and duties of members of board or agents—witnesses.

46-917. Appeal by livestock market or applicant for certificate—bond—procedure.

46-918. Operator of market to warrant title of livestock sold—other duties.

46-918.1. Operator of market to issue a receipt for livestock consigned.

46-920. Penalties.

46-921. Jurisdiction of district courts.

46-901. (3328) Public markets—record books of sales of livestock.

References

Application of Baker Sales Barn, Inc.,
140 M 1, 367 P 2d 775, 778.

46-902. (3329) Inspection of public markets. Livestock inspectors, which include stock inspectors of a county or district, the sheriff of a county, or a representative of the department of livestock, may enter upon the premises where livestock is being held or sold, and be accorded every facility by the owners thereof in determining whether a violation of the law is being made, or is likely to be made, by a person, association, or corporation. The inspection may not unnecessarily interfere with the conduct of the sales. Livestock so sold at the market may not be delivered to the purchaser until he has first received an inspection certificate, issued by one of the officers designated in this section, for the inspection of the livestock, showing clearly and explicitly that the person making the inspection is satisfied as to the ownership of the livestock and the health of all livestock so sold.

History: En. Sec. 2, Ch. 96, L. 1907; Sec. 1816, Rev. C. 1907; re-en. Sec. 3329, R. C. M. 1921; amd. Sec. 115, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "department of livestock" for "livestock commission" in the first sentence and made minor changes in phraseology and punctuation.

46-903. (3330) Quarantine of diseased animals—ownership of animals to be determined—proceeds from sale of stock of unknown owner. If the livestock inspector at a sale finds any livestock afflicted with an infectious or contagious disease, he shall immediately take possession of the livestock and place them in quarantine, to be disposed of as directed by the department. If there is any question respecting the ownership of livestock sold, the livestock inspector may take possession of the livestock. The livestock inspector shall notify the person in charge of the market and conducting the sales and the person who has purchased the livestock at the sale, within a reasonable time. Where livestock is sold, the ownership of which is not known or cannot be determined by the livestock inspector, they may be sold as strays and the net proceeds derived from the sale shall be handled as provided in 46-918.

History: En. Sec. 3, Ch. 96, L. 1907; Sec. 1817, Rev. C. 1907; re-en. Sec. 3330, R. C. M. 1921; amd. Sec. 116, Ch. 310, L. 1974; amd. Sec. 29, Ch. 12, L. 1977.

Amendments

The 1974 amendment substituted references to "department" throughout the section for references to "state veterinary surgeon," "livestock commission of the state of Montana, at Helena, Montana," "commission," and "livestock commission"; substituted "as provided in section 46-904" for "as hereinafter provided" at the end of the section; and made minor changes in phraseology and punctuation.

The 1977 amendment substituted "handled as provided in 46-918" at the end

of the section for "sent to the department to be held and kept, together with a complete description of the livestock, and the brands of the livestock"; deleted the former last two sentences which read "The money shall be held and retained by the department for the use and benefit of the owner of the livestock, and paid to the owner when ownership has been satisfactorily determined. If the proceeds of the sale sent to the department are not claimed by the lawful owner of the livestock within two (2) years from the date of the receipt of the proceeds the money shall be held and disposed of as provided in section 46-904"; and made minor changes in punctuation and phraseology.

46-904, 46-905. (3331, 3332) Repealed.

Repeal

Sections 46-904, 46-905 (Secs. 4, 5, Ch. 96, L. 1907; Sec. 106, Ch. 147, L. 1963;

Sec. 117, Ch. 310, L. 1974), relating to proceeds of sales of stray stock, were repealed by Sec. 59, Ch. 12, L. 1977.

46-906. Definitions. Unless the context requires otherwise, in this chapter:

(1) "livestock" means and includes horses, mules, cattle, swine, sheep, and goats;

(2) "person" means a person, partnership, association, or corporation;

(3) "board" means the board of livestock provided for in 82A-1303;

(4) "certificate" means the certificate of public convenience and necessity authorized to be issued under this chapter;

(5) "commission basis" means the compensation or charge imposed on the owner of livestock for the services rendered the owner by the operator of the livestock market;

(6) "livestock market" means a place where a person assembles livestock for either private or public sale by him and the service is compensated for by the owner on a commission basis or otherwise, except:

(a) a place used solely for a dispersal sale of the livestock of a farmer, dairyman, livestock breeder, or feeder who is discontinuing business and no other livestock is sold there or offered for sale;

(b) a farm, ranch, or place where livestock either raised or kept thereon for the grazing season or for fattening is sold and no other livestock is brought there for sale or offered for sale;

(c) the premises of a butcher, packer, or processor who receives animals exclusively for immediate slaughter;

(d) the premises of a person engaged in the raising of livestock for breeding purposes only, who limits his sale to livestock of his own production;

(e) a place where a breeder or an association of breeders of livestock of any class assemble and offer for sale and sell under his or their own management any livestock, when the breeder or association of breeders assumes all responsibility for the sale and the title of livestock sold;

(7) "off-premises sale" means the sale of livestock by a livestock market for which a certificate has been issued under this chapter at a place other than the one at which the livestock market conducts its usual livestock market operation;

(8) "test station sale" means the sale of livestock from a place where livestock is taken to measure rates of gain under uniform feeding conditions, when that place is not owned by the owner of the livestock.

History: En. Sec. 1, Ch. 193, L. 1945; amd. Sec. 118, Ch. 310, L. 1974; amd. Sec. 1, Ch. 292, L. 1975; amd. Sec. 30, Ch. 12, L. 1977.

Amendments

The 1974 amendment changed the subdivision designations from small letters to numerals; deleted definitions of "commission," "livestock commission," "sanitary board"; inserted the definition of "Board" in subdivision (3); substituted small letters for numerals as the designations of items in subdivision (6); and

made minor changes in phraseology and punctuation.

The 1975 amendment added subdivisions (7) and (8).

The 1977 amendment substituted "this chapter" for "this act" in the preliminary phrase; substituted "partnership" in subdivision (2) for "copartnership"; substituted "for which a certificate has been issued" in subdivision (7) for "licensed"; substituted "livestock market" in subdivision (7) for "licensee"; and made minor changes in phraseology, punctuation and style.

46-906.1. Board regulation of certain types of nonmarket sales of livestock. (1) Each person not a livestock market operator authorized under this chapter conducting the sale of livestock in a breed sale, a breed association sale, or at a test station sale, except when all of the livestock are his and are being sold from his own place, shall obtain approval from the board before conducting the sale.

(2) The board, as conditions to granting approval, may require:

- (a) the names and addresses of those conducting the sale;
- (b) the date, time, and place where the sale will be conducted;
- (c) a detailed statement of the assets and liabilities of the persons conducting the sale;
- (d) the establishment of a custodial account into which all moneys received as purchase for the sale of livestock must be deposited;
- (e) the posting of reasonable bond, in an amount determined by the board;
- (f) the commissions or charges proposed to be imposed on the owners of livestock for services rendered to them associated with the sale;
- (g) a guarantee to pay all consignors in full within a reasonable time as set by the board;
- (h) such other information as the board considers necessary.

History: En. 46-906.1 by Sec. 2, Ch. 292, L. 1975; amd. Sec. 31, Ch. 12, L. 1977.

stock markets to conduct occasional off-premise sales; amending section 46-906, R. C. M. 1947.

Title of Act

An act revising the livestock market laws to permit the department of livestock to regulate certain types of non-market sales and to permit licensed live-

Amendments

The 1977 amendment substituted "authorized" near the beginning of subsection (1) for "licensed"; and made minor changes in phraseology and punctuation.

46-907. Regulation of livestock markets. The board shall:

- (1) supervise and regulate livestock markets in this state;
- (2) regulate the properties, facilities, operations, services, and practices of all livestock markets;
- (3) supervise and regulate livestock markets in all matters affecting the relationship between the operators and owners of livestock and between the operators and purchasers of livestock at the markets;
- (4) prescribe by general order or otherwise rules in conformity with this chapter applicable to all livestock markets and not in conflict with the laws of the United States or regulations of the United States department of agriculture or other federal agencies.

History: En. Sec. 2, Ch. 193, L. 1945; amd. Sec. 119, Ch. 310, L. 1974; amd. Sec. 32, Ch. 12, L. 1977.

Amendments

The 1974 amendment substituted "The board shall" for "The livestock commission and sanitary board of the state of Montana is hereby vested with power and

authority, and it is hereby made its duty" at the beginning of the section; substituted numerals for small letters in the designations of the items of the section; and made minor changes in phraseology.

The 1977 amendment substituted "chapter" in subdivision (4) for "act"; deleted "rules and" before "regulations" in subdivision (4); and made minor changes in punctuation and style.

Powers of Livestock Commission

The discretionary power of the livestock commission to determine whether or not a showing of convenience and necessity has been made by applicant for

certificate to operate a livestock market is limited by section 46-909. Application of Baker Sales Barn, Inc., 140 M 1, 367 P 2d 775, 780. (Dissenting opinions 140 M 1, 367 P 2d 775, 783, 784.)

46-907.1. Occasional off-premises sales may be authorized. (1) The board may authorize occasional off-premises sales by authorized livestock markets and may establish the conditions under which approval for an off-premises sale may be granted, including any change in bonding requirements the board considers necessary.

(2) No livestock market for which a certificate has been issued under this chapter may conduct an off-premises sale without obtaining prior approval of the board.

History: En. 46-907.1 by Sec. 3, Ch. 292, L. 1975; amd. Sec. 33, Ch. 12, L. 1977.

thorized" in subsection (1) for "licensed"; substituted "for which a certificate has been issued" in subsection (2) for "licensed"; and made minor changes in phraseology.

Amendments

The 1977 amendment substituted "au-

46-908. Certificate to operate livestock market required—application, contents of—fee. (1) A person may not operate a livestock market in this state without first obtaining from the board, under this chapter, a certificate declaring that public convenience and necessity require the operation. A person making application for a certificate shall do so in writing, verified by the applicant and specifying the following:

(a) the name and address of the applicant and the names and addresses of its officers, if any;

(b) the place where the applicant proposes to operate a livestock market;

(c) a complete and detailed description of the property and facilities proposed to be used in connection with the livestock market;

(d) the commissions or charges applicant proposes to impose on the owners of livestock for services rendered to them by applicant in the operation of the livestock market;

(e) a detailed statement showing the assets and liabilities of the applicant;

(f) the location of other livestock markets within a radius of 200 miles of the proposed livestock market and the names and addresses of the operators thereof;

(g) a detailed statement of the facts upon which the applicant relies showing public convenience and necessity for the livestock market, including the anticipated revenue from inspection fees that may be derived therefrom by the state;

(h) any additional information the board may require.

(2) The application shall be accompanied by a fee of \$100, which shall also be considered the first annual fee if the application is granted; however, the annual fee shall be paid on the following May 1 and each year thereafter, as provided herein.

History: En. Sec. 3, Ch. 193, L. 1945; amd. Sec. 120, Ch. 310, L. 1974; amd. Sec. 34, Ch. 12, L. 1977.

Amendments

The 1974 amendment substituted "board" for "commission" in the introductory paragraph and in subdivision (8) and made minor changes in phraseology and punctuation.

The 1977 amendment designated the introductory paragraph as subsection (1); substituted "chapter" for "act" in

subsection (1); redesignated subdivisions (1) through (8) as subdivisions (1)(a) through (1)(h); redesignated subdivision (9) as subsection (2); and made minor changes in punctuation and style.

Governmental Licensing

Livestock markets are proper subjects for governmental licensing on the basis of convenience and necessity. Application of Baker Sales Barn, Inc., 140 M 1, 367 P 2d 775, 779. (Dissenting opinions 140 M 1, 367 P 2d 775, 783, 784.)

46-909. Hearing and procedure—limitation upon issuance of certificates. (1) Upon the filing of the application, the board shall fix a time and place for a hearing thereon, which shall not be less than 10 days after the filing. The board shall have a copy of the application and notice of hearing thereon served by mail upon: (a) the operators of any other livestock markets that in the opinion of the board might be affected by the granting of any such certificate; (b) the secretaries of the Montana stockgrowers association and the Montana woolgrowers association; (c) the secretary of the district livestock association, if any; and, (d) the secretary of the livestock association or associations, if any, at the place or within the vicinity of the proposed livestock market, if known to the board; and, (e) upon any railroad company operating into or through any town or city in which the proposed livestock market will be located, at least 10 days before the date of hearings.

(2) If, after hearing upon the application, the board finds from the evidence that public convenience and necessity require the authorization of the proposed livestock market, a certificate therefor shall be issued to the applicant. In determining whether public convenience and necessity require the livestock market, the board shall give reasonable consideration to the service rendered by other existing livestock markets in this state and the effect upon them if the proposed livestock market is authorized, and shall give due consideration to the likelihood of the proposed service being permanent and continuous throughout 12 months of the year.

History: En. Sec. 4, Ch. 193, L. 1945; amd. Sec. 121, Ch. 310, L. 1974; amd. Sec. 1, Ch. 44, L. 1977.

Amendments

The 1974 amendment inserted the numerical subsection designations at the beginning of the paragraphs; substituted references to "board" throughout the section for references to "commission"; and made minor changes in phraseology and punctuation.

The 1977 amendment deleted a former third sentence of subsection (2) which provided that the board would not authorize a proposed livestock market unless it appeared from evidence submitted at the hearing that the minimum revenue derived by the state from inspection fees was equal to 75% of the cost to the state in maintaining a resident livestock

inspector and an office for him at the proposed market, and the cost of maintaining a sufficient record of the recorded livestock brands and marks in the state, but the board could authorize the proposed market if the operator of the proposed market by bond approved by the board guaranteed the payment of the minimum revenue; and made minor changes in style.

Discretionary Power of Commission

This section limits the discretionary power of the livestock commission to determine whether or not a showing of convenience and necessity has been made by applicant for certificate to operate a livestock market. Application of Baker Sales Barn, Inc., 140 M 1, 367 P 2d 775, 780. (Dissenting opinions 140 M 1, 367 P 2d 775, 783, 784.)

Sufficiency of Evidence

In a proceeding to obtain a certificate of public convenience and necessity for operation of a livestock market, evidence may be introduced pertaining to markets outside of Montana but it has effect only so far as the effects on existing markets in the state are concerned. Application of Baker Sales Barn, Inc., 140 M 1, 367 P 2d 775, 782. (Dissenting opinions 140 M 1, 367 P 2d 775, 783, 784.)

Refusal of certificate of public convenience and necessity for operation of a livestock market was justified where evidence of the applicants showed only convenience as to distances, desirability for community and a border-line market economically. Application of Baker Sales Barn, Inc., 140 M 1, 367 P 2d 775, 781. (Dissenting opinions 140 M 1, 367 P 2d 775, 783, 784.)

46-909.1. Transfer of certificate. The board may approve the transfer of ownership of a certificate of public convenience and necessity issued pursuant to this chapter without a determination and showing of public convenience and necessity. Such approval may be granted only after a public hearing at which the transferee's qualifications to operate a livestock market have been thoroughly examined and found sufficient to properly operate a livestock market. A minimum of 10 days' notice by mail must be given to all persons to whom notice is sent pursuant to the provisions of 46-909 on a hearing to consider an initial application for a certificate.

History: En. 46-909.1 by Sec. 1, Ch. 192, L. 1977.

Title of Act

An act revising the livestock auction market law to clarify that the transfer of ownership of a certificate of public convenience and necessity required to operate a livestock market is permitted without a determination and showing of public convenience and necessity; and providing for an immediate effective date.

Legislative Intent

Section 2, Ch. 192, Laws 1977 read

"The legislature declares that the intent of the previously existing livestock auction market law was to permit the transfer of ownership of a certificate of public convenience and necessity without a determination and showing of public convenience and necessity."

Effective Date

Section 3 of Ch. 192, Laws 1977 provided the act should be effective upon its passage and approval. Approved April 1, 1977.

46-910. Repealed.**Repeal**

Section 46-910 (Sec. 5, Ch. 193, L. 1945; Sec. 122, Ch. 310, L. 1974; Sec. 35,

Ch. 12, L. 1977), relating to discontinuance of livestock markets, was repealed by Sec. 3, Ch. 44, Laws 1977.

46-911. Fee. A person operating a livestock market in this state shall pay on May 1, annually, a fee of \$100 to the board. All fees under this chapter shall be paid into the state treasury and placed by the state treasurer to the credit of the earmarked revenue fund for the use of the board.

History: En. Sec. 6, Ch. 193, L. 1945; amd. Sec. 95, Ch. 147, L. 1963; amd. Sec. 123, Ch. 310, L. 1974; amd. Sec. 36, Ch. 12, L. 1977.

Amendments

The 1963 amendment substituted "the earmarked revenue fund for use of the livestock commission" for "the livestock

commission fund" at the end of the section.

The 1974 amendment substituted "board" for "livestock commission" in two places and made minor changes in phraseology.

The 1977 amendment deleted "license" before "fee" in the first sentence; and made minor changes in phraseology, punctuation and style.

46-912. Bond required—conditions. (1) Every person operating a livestock market in this state shall provide a bond in favor of this state, upon a form and with surety to be approved by the board, in the minimum penal sum of \$10,000 or such greater sum as the board may determine, conditioned upon:

(a) the payment immediately upon the sale of the livestock of all money received, less reasonable expenses and commissions, by the livestock market to the rightful owner of livestock so consigned and delivered to it for sale; and

(b) a full compliance with this chapter, including all rules adopted under this chapter.

(2) When approved the bond shall be filed with the board.

(3) Actions of law may be brought in the name of the state upon the bond for the use and benefit of a person who suffers loss or damage from violations thereof and may be brought by the person suffering loss or damage in the county of his residence.

History: En. Sec. 7, Ch. 193, L. 1945; amd. Sec. 124, Ch. 310, L. 1974; amd. Sec. 37, Ch. 12, L. 1977; amd. Sec. 2, Ch. 44, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 12 and once by Ch. 44. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

The 1974 amendment substituted references to "board" for references to "commission" and "secretary of the livestock commission" throughout the section and made minor changes in phraseology and punctuation.

Chapter 12, Laws of 1977, deleted "licensee and operator of the" before "livestock market" near the middle of subdivision (1)(a); substituted "chapter" for "act" in two places in subdivision (1)(b); and made minor changes in phraseology and style.

Chapter 44, Laws of 1977, deleted a condition of "the payment of the minimum fees as provided by section 46-909" before subdivision (1)(b); and made a minor change in style.

Repealing Clause

Section 3 of Ch. 44, Laws 1977 read "Section 46-910, R. C. M. 1947, is repealed."

46-913. Records kept by livestock markets. Each livestock market shall keep accounts, records, and memoranda and shall make reports which the board requires, and the board and its authorized agents and employees shall at all times have access to the accounts, records, and memoranda for inspection and examination.

History: En. Sec. 8, Ch. 193, L. 1945; amd. Sec. 125, Ch. 310, L. 1974; amd. Sec. 38, Ch. 12, L. 1977.

Amendments

The 1974 amendment substituted "board"

for "commission" in two places and made minor changes in phraseology and punctuation.

The 1977 amendment substituted "livestock market" for "licensee"; and made minor changes in punctuation.

46-914. Rules—board to adopt. The board shall adopt and enforce rules it considers necessary or advisable, in the interest of livestock health or public health.

History: En. Sec. 9, Ch. 193, L. 1945; amd. Sec. 126, Ch. 310, L. 1974.

Amendments

The 1974 amendment rewrote this sec-

tion which read: "The Montana livestock sanitary board shall adopt and enforce such rules and regulations as it may deem necessary or advisable, in the interest of

livestock health or public health and such rules and regulations shall have the same force and effect as those adopted by the commission."

46-915. Cancellation or suspension of certificates—grounds. The board may cancel or suspend the certificate of an operator of a livestock market if it finds that the operator has:

- (1) been guilty of fraud or misrepresentation as to the titles, charges, number, brands, weights, proceeds of sale, or ownership of livestock;
- (2) violated any of the provisions of this chapter;
- (3) violated any of the rules adopted and published by the board;
- (4) violated 46-801 through 46-806; or
- (5) violated any of the conditions of the bond, as provided by this chapter.

History: En. Sec. 10, Ch. 193, L. 1945; amd. Sec. 127, Ch. 310, L. 1974; amd. Sec. 39, Ch. 12, L. 1977.

Amendments

The 1974 amendment substituted "board" for "commission" in the introductory clause; substituted "sections 46-801 through 46-806" for "sections 46-801 to

46-807" in item (d); and made minor changes in phraseology and punctuation.

The 1977 amendment redesignated former items (a) through (e) as subdivisions (1) through (5); substituted "this chapter" for "this act" in subdivision (5); and made minor changes in phraseology, punctuation and style.

46-916. Investigation of actions of livestock markets—hearing of complaints—additional powers and duties of members of board or agents—witnesses. (1) When considered necessary, the board or any member or agent of the board may upon a motion or upon a verified complaint in writing investigate the actions of a livestock market and, if found proper to do so, shall file a complaint against the livestock market with the board. The complaint shall be set for hearing before the board upon 10 days' notice served upon the livestock market.

(2) Any investigation, inquiry, or hearing which the board may undertake or hold under this chapter may be undertaken or held by or before any board member or by or before any agent or examiner of the board designated for that purpose by the board. A finding, order, or decision made by a board member or agent or examiner of the board so designated pursuant to the investigation, inquiry, or hearing, when approved and confirmed by the board and ordered filed in its office, is considered the finding, order, or decision of the board. An agent or examiner of the board may administer oaths, examine witnesses, and receive evidence.

History: En. Sec. 11, Ch. 193, L. 1945; amd. Sec. 128, Ch. 310, L. 1974; amd. Sec. 40, Ch. 12, L. 1977.

Amendments

The 1974 amendment substituted "The board or any member or agent of the board" for "the commission, sanitary board or any member or the secretaries

thereof" at the beginning of subsection (1); substituted references to "board" throughout the section for references to "commission"; deleted former subsection (2), pertaining to powers of members of the commission, sanitary board or the secretaries thereof to administer oaths and issue process and to the payment of witness fees; designated former sub-

section (3) as subsection (2); and made minor changes in phraseology and punctuation.

The 1977 amendment substituted "livestock market" in three places in subsec-

tion (1) for "licensee"; substituted "chapter" for "act" in subsection (2); and made minor changes in phraseology, punctuation and style.

46-917. Appeal by livestock market or applicant for certificate—bond—procedure. An appeal of a decision of the board for refusing to grant an application for a certificate or suspending or revoking a certificate of a livestock market shall be taken to the district court of the county in which the proposed livestock market is to be located or in which the authorized livestock market has its principal place of business. The appellant shall file a bond with the clerk of the district court in the sum of \$300 to be approved by the judge of the court, conditioned to pay all costs that may be awarded against the appellant in the event of an adverse decision or the decision of the board being affirmed. The cost of preparing transcripts shall be paid by appellant. In case of suspension or revocation of a certificate, the filing of the notice and bond shall stay the order of the board until the final determination of the appeal. If the appellant fails to perfect the appeal the stay shall automatically terminate.

History: En. Sec. 12, Ch. 193, L. 1945; amd. Sec. 1, Ch. 231, L. 1947; amd. Sec. 129, Ch. 310, L. 1974; amd. Sec. 41, Ch. 12, L. 1977.

Amendments

The 1974 amendment substituted "board" for "commission"; deleted a policy statement of the legislative assembly that "appeals should be heard solely upon the record of the proceedings before the commission in the matter in which the appeal is taken"; deleted a provision pertaining to notice of appeal; deleted a provision requiring the appellant to file with the court a transcript of the testimony and proof; deleted provisions pertaining to the trial before the district court; deleted a provision for appeal from judgment of the district court to the supreme court; and made minor changes in phraseology and punctuation.

The 1977 amendment substituted "livestock market" after "certificate of a" in the first sentence for "licensee"; substituted "authorized livestock market" near the end of the first sentence for "licensee"; and made minor changes in phraseology, punctuation and style.

Review by District Court

On review provided in the district court under this section it is the duty of the court to examine the records made before the livestock commission to determine whether the commission acted "capriciously, arbitrarily, or abused its discretion and whether it acted according to law." Application of Baker Sales Barn, Inc., 140 M 1, 367 P 2d 775, 780. (Dissenting opinions 140 M 1, 367 P 2d 775, 783, 784.)

46-918. Operator of market to warrant title of livestock sold—other duties. The operator of each livestock market in this state shall warrant to the purchaser thereof the title of all livestock sold through his livestock market and shall be liable to the rightful owner thereof for the net proceeds in cash received for the livestock so sold. An operator of a livestock market shall, when notified by the authorized brand inspector, that there is a question as to whether any designated livestock sold through the market is lawfully owned by the consignor thereof, hold the proceeds received from the sale of the livestock for a reasonable time not to exceed thirty (30) days, to permit the consignor to establish ownership. If at the expiration of that time, the consignor fails to establish his lawful ownership to the livestock, the proceeds shall be transmitted by the operator of

a livestock market to the board. The board may dispose of the proceeds in accordance with chapter 10 of this title, relating to the distribution of estray money, and the board's receipt therefor shall relieve the operator of a livestock market from further responsibility for the proceeds. Proof of ownership and account of all sales of livestock shall be transmitted by the authorized brand inspector to the board.

History: En. Sec. 13, Ch. 193, L. 1945; amd. Sec. 130, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted refer-

ences to "board" throughout the section for references to "secretary of the livestock commission" and to "secretary" and made minor changes in phraseology and punctuation.

46-918.1. Operator of market to issue a receipt for livestock consigned.

A person operating a livestock market as defined by section 46-906 which must have a certificate issued by the board according to section 46-908, shall issue a receipt to any person, firm, partnership, or corporation selling livestock through a livestock market showing the number and description of livestock he has consigned for sale.

History: En. Sec. 1, Ch. 34, L. 1969; amd. Sec. 131, Ch. 310, L. 1974.

Title of Act

An act requiring any person who operates a livestock market and obtains a certificate issued by the livestock commission according to section 46-908, R. C. M. 1947, to issue a receipt to any person, firm,

partnership, or corporation selling livestock through a livestock market showing the number of livestock he has consigned.

Amendments

The 1974 amendment substituted "board" for "Montana livestock commission" and made minor changes in phraseology.

46-920. Penalties. A person who violates any provisions of this chapter or rules adopted by the board under this chapter is guilty of a misdemeanor and upon conviction shall be fined not less than \$100 or more than \$600, imprisoned in the county jail not less than 30 days or more than 6 months, or both fined and imprisoned. A person who has been convicted of a violation of this chapter and who subsequently is found guilty of another violation of this chapter shall be fined not less than \$200 or more than \$1,000, imprisoned in the county jail for not less than 3 months or more than 6 months, or both fined and imprisoned. A second conviction requires the board to suspend or cancel the certificate of the person without a hearing, and the person may not again be granted a certificate for a period of 1 year.

History: En. Sec. 15, Ch. 193, L. 1945; amd. Sec. 132, Ch. 310, L. 1974; amd. Sec. 42, Ch. 12, L. 1977.

Amendments

The 1974 amendment substituted "board" for "commission or the sanitary board" in the first sentence; substituted "board" for "commission" in the last sentence; and

made changes in phraseology and punctuation.

The 1977 amendment substituted "this chapter" for "this act" throughout the section; substituted "another violation" in the second sentence for "a violation"; and made minor changes in phraseology, punctuation and style.

46-921. Jurisdiction of district courts. The district courts shall have original jurisdiction in all criminal actions for violations of the provisions of this chapter.

History: En. Sec. 16, Ch. 193, L. 1945; amd. Sec. 43, Ch. 12, L. 1977.

Amendments

The 1977 amendment substituted "chapter" at the end of the section for "act."

CHAPTER 10—ESTRAYS—DISPOSAL OF

- Section 46-1001. Estrays—department authorized to take possession of.
 46-1002. Taking up and disposal of estrays—advertisement.
 46-1003. Sale at public auction—branding.
 46-1004. Expenses, how paid—disposition of proceeds of sale.
 46-1005. "Estray," defined.
 46-1006. Publication of description of estrays sold—disposition of proceeds remaining in state treasury.
 46-1008. Shipment of stray cattle—duty of shipper and railroad agents—petition for inspection.
 46-1011. Powers and duties of inspectors outside of state.
 46-1012. Department to furnish blanks.

46-1001. (3333) Estrays—department authorized to take possession of. The department of livestock and its appointed stock inspectors may take possession of estrays found running at large in this state, and may dispose of the estrays, subject to the following restrictions.

History: En. Sec. 1, Ch. 34, L. 1915; re-en. Sec. 3333, R. C. M. 1921; amd. Sec. 133, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "livestock commission" in the caption; substituted "The department of livestock" for "The livestock commission" at the beginning of the section; and made minor changes in phraseology.

46-1002. (3334) Taking up and disposal of estrays—advertisement. A stock inspector authorized by the department shall take into his possession an estray found in his district, and shall either ship, or arrange for the shipment of, the estray to a licensed livestock market for sale. The proceeds from the sale shall be disposed of under sections 46-1004 and 46-1006; or he may hold the estray in his possession, and care for the estray in the cheapest and most practicable manner for a period of not less than thirty (30) days, nor more than sixty (60) days, during which time he shall advertise that he holds the estray, and that unless claimed by the owner he will, on a date to be specified in the notice, sell the estray at a public auction to the highest bidder for cash. The notice shall be published in the newspaper doing the county printing of the county in which the estray is found, and in addition to that paper in a paper published in the town or city nearest the place in which the estray is held. This notice shall be published at least once a week for four (4) consecutive weeks, and shall contain a statement of the date of the sale, the place where the sale is to be held, and a general description of the estray, including the sex and the approximate age, together with an illustration of the brand and the position of the brand on the estray, and a description of the place or locality where the estray was found or taken. The owner of the estray may appear and claim it at any time before the sale or shipment, as provided in this chapter, and without cost or expense to the owner.

History: En. Sec. 2, Ch. 34, L. 1915; re-en. Sec. 3334, R. C. M. 1921; amd. Sec. 1, Ch. 34, L. 1943; amd. Sec. 134, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "Montana livestock commission" in the first sentence; substituted "as provided in this chapter" for "as hereinafter provided" in the last sentence; and made minor changes in phraseology and punctuation.

46-1003. (3335) Sale at public auction—branding. On the date specified in the notice provided for in section 46-1002, the stock inspector shall sell the estray at a public auction to the highest bidder for cash. Before removal from the sale the stock inspector shall brand the estray with the recorded estray brand of the department.

History: En. Sec. 3, Ch. 34, L. 1915; re-en. Sec. 3335, R. C. M. 1921; amd. Sec. 135, Ch. 310, L. 1974.

tion 46-1002" for "the preceding section"; substituted "department" for "livestock commission"; and made minor changes in phraseology and punctuation.

Amendments

The 1974 amendment substituted "sec-

46-1004. (3336) Expenses, how paid—disposition of proceeds of sale. Expenses for collecting, holding, advertising, and selling of the estray shall be paid out of the gross proceeds of the sale of the estray, and the balance of the proceeds of the sale shall be forwarded to the department to be advertised as estray funds in the manner provided by law. The proceeds are subject to claim by the owner of the animal for a period of two (2) years from the date of the sale. If the owner of the estray claims the animal before the sale of the animal, the expense incurred by the stock inspector to that time shall be paid by the department as an expense of the department.

History: En. Sec. 4, Ch. 34, L. 1915; re-en. Sec. 3336, R. C. M. 1921; amd. Sec. 136, Ch. 310, L. 1974.

ences to "department" throughout the section for references to "livestock commission" and to "commission" and made minor changes in phraseology and punctuation.

Amendments

The 1974 amendment substituted refer-

46-1005. (3337) "Estray," defined. In this act "estrays" means a horse, mule, mare, gelding, colt, cow, ox, bull, stag, steer, heifer, calf, sheep, or lamb, not bearing a brand and the ownership of which cannot be determined by the stock; inspector of the district in which the animal is found, by inquiry among reputable resident stock owners or freeholders; or any of these animals bearing a recorded brand, the owner of which brand cannot be located at or through the post office designated on the records of the department, or which owner cannot be located by the stock inspector of the district where the estray is found by inquiry among reputable resident stock owners or freeholders; or any of these animals which bears an unrecorded brand, the owner of which unrecorded brand cannot be ascertained by the stock inspector of the district in which the animal is found, by inquiry among reputable resident stock owners or freeholders.

History: En. Sec. 5, Ch. 34, L. 1915; re-en. Sec. 3337, R. C. M. 1921; amd. Sec. 1, Ch. 112, L. 1959; amd. Sec. 1, Ch. 37, L. 1963; amd. Sec. 137, Ch. 310, L. 1974.

the records of the department" for "upon the records of the recorder of marks and brands" and made minor changes in phraseology and punctuation.

Amendments

The 1963 amendment extended the section to include sheep and lambs.

The 1974 amendment substituted "on

Repealing Clause

Section 2 of Ch. 37, Laws 1963 repealed all acts and parts of acts in conflict therewith.

46-1006. (3338) Publication of description of estrays sold—disposition of proceeds remaining in state treasury. A full description of estrays

for which the proceeds derived from the sale remains in the hands of the treasurer unclaimed shall be published for the period of two (2) consecutive weekly, semimonthly, or monthly issues after May 1 of each year in not more than four (4) weekly, semimonthly, or monthly publications in this state. The publications shall be designated by the department, and when the publication has been made and the proceeds from the sale of the estrays has remained in the hands of the state treasurer for a period of two (2) years; it shall be, by the treasurer, upon request of the department, immediately be placed to the credit of the earmarked revenue fund for the use of the department.

History: En. Sec. 5, Ch. 2, L. 1911; amd. Sec. 1, Ch. 20, L. 1919; re-en. Sec. 3338, R. C. M. 1921; amd. Sec. 1, Ch. 63, L. 1927; amd. Sec. 1, Ch. 95, L. 1941; amd. Sec. 107, Ch. 147, L. 1963; amd. Sec. 138, Ch. 310, L. 1974.

Amendments

The 1963 amendment substituted "earmarked revenue fund for the use of the livestock commission" for "state live-

stock commission fund" at the end of the section.

The 1974 amendment substituted "department" for "state livestock commission" in two places; substituted "earmarked revenue fund for the use of the department" for "earmarked revenue fund for the use of the livestock commission" at the end of the section; and made minor changes in phraseology and punctuation.

46-1008. (3341) Shipment of stray cattle—duty of shipper and railroad agents—petition for inspection. A person, agent, firm, corporation, pool, or roundup association who ships cattle by railroad to a market where Montana livestock inspectors are maintained, may ship with their own cattle estrays which are among them. They must before shipment, or at the time of loading the cattle on the cars for shipment, carefully and as accurately as possible inspect or tally the brand on the cattle, whether their own or estrays, making a list in duplicate. The list shall state the date of loading, name of shipper, description of brands on each animal, number and class of the cattle bearing the brand, destination, name of the commission firm to whom consigned, and the name of the person in charge of the shipment; and in the case of cattle not owned by the shipper which are marked with a recorded brand, or where the owner is known to be someone other than the shipper, the shipper must obtain the written consent of the owner, or the written consent of a state stock inspector or a deputy state stock inspector before shipment of the cattle. The railroad agent at the point of loading shall require from the shipper the lists described in this act, and shall forward, within twenty-four (24) hours after loading, one (1) copy to the department, and another copy to the Montana brand inspector at the point of destination. However, in a county where there has been established an association of livestock people, the department, on the receipt of a petition from an association, shall require that all cattle shipped by rail from the county be inspected by a state stock inspector or deputy state stock inspector before the cattle are loaded. The petition must be signed by at least fifty-one per cent (51%) of the owners of cattle in the county, and these petitioners must own at least fifty-five per cent (55%) of the cattle as shown by the most recent completed assessment records of the county assessor.

History: En. Sec. 1, Ch. 94, L. 1907; R. C. M. 1921; amd. Sec. 1, Ch. 29, L. 1923; amd. Sec. 1, Ch. 137, L. 1943; amd. Sec. 1820, Rev. C. 1907; re-en. Sec. 3341,

Sec. 1, Ch. 99, L. 1957; amd. Sec. 139, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "department" for "livestock commission at

Helena, Montana" in the fourth sentence; substituted "department" for "livestock commission" in the fifth sentence; and made minor changes in phraseology and punctuation.

46-1011. (3343) Powers and duties of inspectors outside of state

(1) The stock inspector appointed to inspect Montana cattle at a cattle market outside this state shall be commissioned by the department and may inspect cattle that come from this state to the market where he is located. He has the same power as stock inspectors in this state to inspect, seize, and sell stock which he has reason to believe is stolen or on which brands have been altered or obliterated. He may take the proceeds of an animal in dispute or bearing altered or burned brands, remitting the proceeds to the department, which shall hold the proceeds pending a decision on ownership.

(2) The stock inspector shall, on receipt of the certified lists mentioned in 46-1008 and 46-1010, make an inspection of the cattle listed, and if, on comparison of the list with his own inspection, he finds a difference or discrepancy, he shall make a second inspection of any animal for which the two tallies do not agree, clipping the animal when necessary to determine, accurately and definitely, which inspection or tally is correct. He shall immediately make an inspection report to the department, stating in detail where the discrepancies with the loading tally exist, and calling special attention to his own inspection of the animal. He shall, in his own report, make mention of any animal, with the brands on the animal, which were taken out by the shipper in charge of the stock while in transit between the original loading point and point of final destination. These reports shall be entered in a suitably bound book and are at all times open to public inspection.

History: En. Sec. 3, Ch. 94, L. 1907; Sec. 1822, Rev. C. 1907; re-en. Sec. 3343, R. C. M. 1921; amd. Sec. 140, Ch. 310, L. 1974; amd. Sec. 44, Ch. 12, L. 1977.

Amendments

The 1974 amendment substituted "department" for "livestock commission" in three places and made minor changes in phraseology and punctuation.

The 1977 amendment inserted the subsection designations; inserted "and sell" in the second sentence of subsection (1); substituted "46-1008" in the first sentence of subsection (2) for "46-1009"; and made minor changes in phraseology, punctuation and style.

46-1012. (3344) Department to furnish blanks. The department shall have printed the necessary blanks for the tallying of cattle at loading points under section 46-1008, and it shall furnish the blanks free to shippers on application. The expense of the printing shall be paid by the department.

History: En. Sec. 4, Ch. 94, L. 1907; Sec. 1823, Rev. C. 1907; re-en. Sec. 3344, R. C. M. 1921; amd. Sec. 141, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "Department" for "Livestock commission" in

the caption; substituted "The department" for "The livestock commission" at the beginning of the section; substituted "paid by the department" for "paid out of the livestock commission fund" at the end of the section; and made minor changes in phraseology.

CHAPTER 11—HIDES OF SLAUGHTERED CATTLE—REGULATION— HIDE DEALERS' LICENSES

Section 46-1101.1. Definitions.

46-1101.2. Hide certificate—identification.

46-1103. Mutilation or concealment of hides a felony.

46-1104. Sufficiency of pleading and proof in criminal prosecution.

46-1107. Hide dealer or buyer's license fee—disposition of proceeds.

46-1107.1. Acting without a license—revocation.

46-1114. Seizure and sale of hides when ownership cannot be determined—disposition of proceeds.

46-1101.1. Definitions. (1) "Animal hide" means the hide of a cattle, horse, mare, colt, mule, jack, or jenny.

(2) "Seller" means a person selling or delivering animal hides for or without a pecuniary consideration.

(3) "Inspector" means a sheriff, deputy sheriff, state stock inspector or deputy state stock inspector appointed by the department of livestock.

(4) "Hide certificate" means a certificate showing a transfer of ownership of animal hides.

History: En. Sec. 1, Ch. 44, L. 1961; amd. Sec. 142, Ch. 310, L. 1974.

"'Commission' means the livestock commission of the state of Montana"; substituted "department of livestock" for "livestock commission" at the end of subsection (3); and made minor changes in phraseology and punctuation.

Amendments

The 1974 amendment changed the subsection designations from small letters to numerals; deleted a definition reading:

46-1101.2. Hide certificate—identification. (1) A seller of an animal hide shall obtain a hide certificate from the person receiving the hide. The department shall prescribe the form of the certificate which shall include the marks and brands on each hide. The party receiving the hide must designate where it will be kept for 30 days following delivery. The certificate must be signed by the seller or his agent and the person receiving the hide.

(2) Hide certificates, tags, and glue shall be furnished to the sheriff of each county by the department at cost and by the sheriff to any person requiring the certificates, tags, and glue. Only those certificates, tags, and glue distributed by the department may lawfully be used under this act. The original certificate shall be filed with the sheriff of the county of the seller's residence. One copy shall be sent by the party receiving the hide to the department, one retained by the seller, and one by the hide buyer. On reasonable notice, a sheriff, deputy sheriff, state stock inspector, or deputy state stock inspector may inspect the hide certificate copy of the seller or buyer. The department shall prescribe an identification tag to be affixed to each hide by the person receiving the hide when it is delivered. If hides are purchased outside the county of the seller's residence, the hide dealer or buyer must also mail a copy of the hide certificate to the sheriff of each county in which hides are purchased within 5 days after purchase.

History: En. Sec. 2, Ch. 44, L. 1961; amd. Sec. 143, Ch. 310, L. 1974; amd. Sec. 45, Ch. 12, L. 1977.

Amendments

The 1974 amendment inserted the numerical subsection designations at the

beginning of the paragraphs; substituted "department" for "commission" throughout the section; and made minor changes in phraseology and punctuation.

The 1977 amendment inserted "If hides are purchased outside the county of the seller's residence" at the beginning of

the last sentence of subsection (2); substituted "a copy of the hide certificate" for "original hide certificate" in the last sentence of subsection (2); and made minor changes in phraseology, punctuation and style.

46-1103. (3350.4) Mutilation or concealment of hides a felony. Every person who willfully or maliciously mutilates, destroys, or conceals the hide of any horse, mare, colt, mule, jack, jenny, bull, steer, cow, calf, goat, hog, or sheep with intent to or for the purpose of removing evidence of ownership of such hide or the animal from which the hide was removed is guilty of a felony and punishable as hereinafter provided.

History: En. Sec. 1, Ch. 76, L. 1923; amd. Sec. 46, Ch. 12, L. 1977.

Amendments

The 1977 amendment substituted "jenny" for "jennet"; and made minor changes in phraseology and punctuation.

46-1104. (3350.5) Sufficiency of pleading and proof in criminal prosecution. In any prosecution for the violation of the provisions of this act, it is not necessary for the state to allege in the complaint or information the ownership of the hide or of the animal from which the hide was removed, but it is sufficient to allege in the complaint or information that the owner of the hide or of the animal from which the hide was removed is unknown and not the property of the defendant.

History: En. Sec. 2, Ch. 76, L. 1923; amd. Sec. 47, Ch. 12, L. 1977.

Amendments

The 1977 amendment deleted "or proof" after "information" in two places; and made minor changes in punctuation and phraseology.

46-1107. (3350.8) Hide dealer or buyer's license fee—disposition of proceeds. Before engaging in business in this state, a hide dealer or buyer shall obtain a license from the department. The annual license fee is \$5 for each established place of business at which the hide dealer or buyer purchases or deals in hides. The license continues in force for that calendar year. The moneys collected from the licenses shall be placed in the earmarked revenue fund for the department. The license must be renewed January 1 of each year.

History: En. Sec. 2, Ch. 151, L. 1929; amd. Sec. 2, Ch. 177, L. 1939; amd. Sec. 5, Ch. 44, L. 1961; amd. Sec. 4, Ch. 248, L. 1965; amd. Sec. 144, Ch. 310, L. 1974; amd. Sec. 48, Ch. 12, L. 1977.

Amendments

The 1965 amendment substituted "earmarked revenue fund, livestock commission account" for "livestock commission fund" at the end of the second sentence.

The 1974 amendment substituted "department" for "livestock commission" in the first sentence; substituted "earmarked revenue fund of the department" for "ear-

marked revenue fund, livestock commission account" at the end of the second sentence; and made minor changes in phraseology and punctuation.

The 1977 amendment substituted the first two sentences for a sentence reading "A hide dealer or buyer shall pay to the department a license fee of five dollars (\$5) for each established place of business at which the hide dealer or buyer purchases or deals in hides, before engaging in or conducting this business in this state"; and made minor changes in phraseology and style.

46-1107.1. Acting without a license—revocation. (1) Any person acting as a hide dealer or buyer without a license as required by this act is guilty of a misdemeanor.

(2) Upon receipt of a certified copy of the judgment of conviction of any hide dealer or buyer for any violation of this act, the department may revoke the license of such person for 1 year commencing on the date of the licensee's conviction.

History: En. Sec. 6, Ch. 44, L. 1961; amd. Sec. 49, Ch. 12, L. 1977.

section designations; substituted "department" in subsection (2) for "livestock commission"; and made a minor change in style.

Amendments

The 1977 amendment inserted the sub-

46-1114. Seizure and sale of hides when ownership cannot be determined—disposition of proceeds. (1) A state stock inspector or other officer who has authority to make an inspection of a slaughtered beef, veal or hide of a beef or veal, may seize and hold the hide, when on inspection the officer finds that the brand is so altered, obliterated, or defaced that the original brand cannot be determined by a reasonable inspection, or when he finds that ownership cannot be established by the brand or by other satisfactory proof.

(2) If within fifteen (15) days after the seizure of the hide, proof of ownership cannot be established either by brand, bill of sale, or otherwise, the officer may sell the hide at the best available price and remit the proceeds, less the cost of processing, storing, and selling to the department together with a full report of his investigation. The report shall contain a statement of the reason for the seizure and sale together with any tendered proof of ownership of any party. The proceeds shall be deposited by the department with the state treasurer and credited to the stock estray fund, where it shall be subject to claim by a party showing proper proof of ownership in the same manner as provided in section 46-1004.

History: En. Sec. 1, Ch. 113, L. 1961; amd. Sec. 145, Ch. 310, L. 1974.

subsection (2); substituted "in the same manner as provided in section 46-1004" for "in the same manner and for the same length of time as is provided by law for the making of claims against the said fund" at the end of subsection (2); and made minor changes in phraseology and punctuation.

Amendments

The 1974 amendment inserted the numerical subsection designations at the beginning of the paragraphs; substituted "department" for "Montana livestock commission" and "livestock commission" in

CHAPTER 12—IMPROVEMENT OF LIVESTOCK

46-1201 to 46-1204. (3351 to 3354) Repealed.

Repeal

Sections 46-1201 to 46-1204 (Secs. 1 to 4, Ch. 6, L. 1913), relating to duties

of the county assessor and publication regarding purebred animals, were repealed by Sec. 59, Ch. 12, Laws 1977.

CHAPTER 14—LEGAL FENCES—LIABILITY OF OWNERS FOR TRESPASSING STOCK

- Section 46-1406. Procedure when owner unknown or not resident of state—sale of wire removed.
- 46-1409. Liability of owners of stock for trespass.
- 46-1410. Stock trespassing may be retained.
- 46-1411. Marking land and mining claims in national forest.
- 46-1413. Marking—right of action against trespassing stock.

46-1406. (3376.3) Procedure when owner unknown or not resident of state—sale of wire removed. If there is no known owner of such wire within the state or if such owner is unknown to the board of county commissioners, the board may collect and remove the wire at the expense of the county. All such wire or other fencing as in the opinion of the board of county commissioners can be sold at a price sufficient to cover at least the expense of removal and sale shall be sold by the county commissioners in the manner provided by law for the sale of county property, except that notice of such sale need be published only once and need be given only 10 days before such sale.

History: En. Sec. 3, Ch. 84, L. 1927; amd. Sec. 50, Ch. 12, L. 1977.

Amendments

The 1977 amendment deleted "now" before "provided" in the last sentence; and made minor changes in punctuation and phraseology.

46-1409. (3378) Liability of owners of stock for trespass. If any cattle, horse, mule, ass, hog, sheep, bison, or other domestic animal break into any inclosure, the fence being legal, as hereinbefore provided, the owner of such animal is liable for all damages to the owner or occupant of the inclosure which may be sustained thereby. This section must not be construed so as to require a legal fence in order to maintain an action for injury done by animals running at large contrary to law.

History: En. Sec. 1119, 5th Div. Comp. Stat. 1887; re-en. Sec. 3258, Pol. C. 1895; re-en. Sec. 2090, Rev. C. 1907; re-en. Sec. 3378, R. C. M. 1921; amd. Sec. 1, Ch. 199, L. 1977.

Amendments

The 1977 amendment inserted "bison" into the list of domestic animals at the beginning of the section.

46-1410. (3379) Stock trespassing may be retained. (1) If an animal breaks into an inclosure surrounded by a legal fence or is wrongfully on the premises of another, the owner or occupant of the inclosure or premises may take into his possession the trespassing animal and keep the animal until all damages, together with reasonable charges for keeping and feeding the animal, are paid. The person who takes the animal into his possession shall, within 72 hours after he takes possession, give written notice to the owner or person in charge of the animal, stating that he has taken the animal. The notice shall also give the date of the taking, the description of the animal taken, including marks and brands, if any, the amount of damages claimed, the charge per head per day for caring for and feeding the animal, and the description, either by legal subdivisions or other general description, of the location of the premises

on which the animal is held. In all cases a copy of the notice shall also be posted at a point where the animal was taken.

(2) The notice shall be given to the owner or person in charge only when the owner or person in charge of the animal is known to the person taking the animal and resides within 25 miles of the premises on which the animal was taken. If the owner or person in charge of the animal resides more than 25 miles from the place of the taking, the notice shall be mailed to him. In this case or if the owner is unknown, a similar notice shall be mailed to the department of livestock and the sheriff of the county in which the animal has been taken. On receipt of the notice, the sheriff shall post a copy of the notice at the courthouse and shall send by certified mail a copy of it to the owner of the stock, if known to him. If unknown to him, the sheriff shall send a copy of the notice to the nearest state livestock inspector.

(3) If the parties within 5 days thereafter do not agree to the amount of damages, the claimant must within 10 days thereafter institute a civil action to collect his claim in a court of competent jurisdiction. Pending the outcome of the suit, the person taking the stock may, at the expense of the owner, retain a sufficient number of animals to cover the amount of damages claimed by him. The defendant may, after the institution of the action, on filing a bond executed by two or more sureties and approved by the court in double the sum sued for, conditioned upon the payment to the plaintiff of all sums, including costs that may be recovered by the plaintiff, have all livestock returned to him. The claimant is liable to the owner for any loss or injury to the stock occurring through his fault or neglect. If the claimant fails to recover in the action a sum equal to that offered him by the owner of the stock, the claimant bears the expense of keeping and feeding the stock while in his possession.

(4) A person who takes or rescues an animal from the possession of the person taking the animal, without his consent, is guilty of a misdemeanor and shall be fined not less than \$100 or more than \$500.

History: En. Sec. 8, p. 48, L. 1881; re-en. Sec. 1120, 5th Div. Comp. Stat. 1887; re-en. Sec. 3259, Pol. C. 1895; re-en. Sec. 2091, Rev. C. 1907; amd. Sec. 1, Ch. 231, L. 1921; re-en. Sec. 3379, R. C. M. 1921; amd. Sec. 146, Ch. 310, L. 1974; amd. Sec. 51, Ch. 12, L. 1977.

Amendments

The 1974 amendment substituted "department of livestock" for "Montana livestock commission" in the second sentence of subsection (2) and made minor changes in phraseology and punctuation throughout the section.

The 1977 amendment substituted "animal" in the last sentence of subsection (1) for "stock"; substituted "certified mail" in the fourth sentence of subsection

(2) for "registered mail"; substituted "collect his claim" in the first sentence of subsection (3) for "foreclose his lien"; substituted "number of animals" in the second sentence of subsection (3) for "amount of stock"; substituted "claimant" for references to person in the last two sentences of subsection (3); and made minor changes in phraseology, punctuation and style.

Personal Injury in Removing Animal

The notice requirements of subsection (2) were irrelevant to an action against the owner of a trespassing mule for personal injuries sustained in attempting to remove the mule. *Ekwortzel v. Parker*, 156 M 477, 482 P 2d 559.

46-1411. (3380) Marking land and mining claims in national forest. It shall be the duty of the owner, or the person holding possessory right,

to all unfenced lands, or patented or unpatented mining claims, which said lands or patented or unpatented mining claims lie within the boundary of national forest reserves in the state of Montana, or lying on public ranges adjoining to any national forest reserve, to mark the boundaries thereof by substantial monuments that can be readily seen and observed so that such boundaries can be readily traced.

History: En. Sec. 1, Ch. 222, L. 1921; re-en. Sec. 3380, R. C. M. 1921; amd. Sec. 1, Ch. 31, L. 1963.

Amendment

The 1963 amendment inserted "or unpatented" before "mining claims" in two places.

46-1413. (3382) Marking—right of action against trespassing stock. No person owning or possessing agricultural or grazing land, or patented or unpatented mining claims lying within said national forest reserves of this state or on the public range lying adjoining to any said national forest reserve, the boundaries of which said lands are not marked as required by the provisions of this act, shall have any claim or cause of action or right of action against the owner of sheep, cattle or other livestock under the charge of a herder, for trespass committed by such livestock upon said land, and such shall be the rule regardless of whether the said livestock so trespassing strayed thereon on their own inclination and without being driven, or whether said livestock were herded or driven on said land; provided, that no person or persons can claim exemption for trespassing under the provisions of this section where such person or persons shall have actual knowledge of the boundary lines of any lands herein referred to; but in no event shall damages other than nominal damages be assessed against said trespass, unless the landowner or his duly authorized agent shall within six months after said trespass has been committed, give said trespasser written notice demanding a sum certain for damages sustained by reason of such trespass.

History: En. Sec. 3, Ch. 222, L. 1921; re-en. Sec. 3382, R. C. M. 1921; amd. Sec. 1, Ch. 78, L. 1927; amd. Sec. 2, Ch. 31, L. 1963.

Repealing Clause

Section 3 of Ch. 31, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1963 amendment inserted "or unpatented" before "mining claims" near the beginning of the section; and substituted "livestock" for "sheep" before "so trespassing" and before "were herded or driven."

Effective Date

Section 4 of Ch. 31, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved February 2, 1963.

CHAPTER 15—HERD DISTRICTS

Section 46-1501. Herd districts—creation, size, location—dissolution—exclusion of government land—records.

46-1501. (3384) Herd districts—creation, size, location—dissolution—exclusion of government land—records. (a) to (c) * * * [Same as parent volume.]

(d) Herd districts may be created jointly between any two (2) or more counties of the state of Montana where the lands to be included in

the district meet the requirements of this section and either extend across county boundaries under one (1) ownership or are contiguous to the land of owners in the adjoining county wishing to participate in the herd district. The county commissioner boards of each county desiring to participate in a joint herd district shall comply with all the provisions of this section dealing with single-county districts. A joint herd district shall be created only after approval by all county commissioner boards of participating counties as provided for single-county herd districts in this section. Joint herd districts may be dissolved in the same manner as single-county herd districts.

History: En. Ch. 74, L. 1917; amd. Sec. 2, Ch. 167, L. 1919; re-en. Sec. 3384, R. C. M. 1921; amd. Sec. 1, Ch. 56, L. 1929; amd. Sec. 1, Ch. 117, L. 1931; amd. Sec. 1, Ch. 103, L. 1951; amd. Sec.

1, Ch. 209, L. 1959; amd. Sec. 1, Ch. 39, L. 1974.

Amendments

The 1974 amendment added subsection (d).

CHAPTER 17—ANIMALS RUNNING AT LARGE

- Section 46-1701. Rams and he-goats not to run at large.
 46-1708. Declaration of animals running at large as nuisance—abatement.
 46-1717. Female breeding cattle, purebred bull to accompany.
 46-1720. [Transferred from Title 94.]

46-1701. (3390) Rams and he-goats not to run at large. (1) It is unlawful for an owner or person having the management or control of a ram or he-goat to permit it to run at large between August 1 and December 1 of each year.

(2) A person violating this section is guilty of a misdemeanor.

History: En. Sec. 76, 5th Div. Comp. Stat. 1887; re-en. Sec. 3060, Pol. C. 1895; re-en. Sec. 1881, Rev. C. 1907; re-en. Sec. 3390, R. C. M. 1921; amd. Sec. 147, Ch. 310, L. 1974.

Amendments

The 1974 amendment inserted the subsection designation "(1)" at the beginning of the section; made minor changes in phraseology in subsection (1); and added subsection (2).

46-1702. (3391) Repealed.

Repeal

Section 46-1702 (Sec. 3061, Pol. C. 1895), relating to the penalty for per-

mitting rams and he-goats to run at large, was repealed by Sec. 201, Ch. 310, Laws of 1974. See section 46-1701(2).

46-1708. (3400.2) Declaration of animals running at large as nuisance—abatement. Any such animal so running at large is a public nuisance, which, in addition to the means and proceedings prescribed by this act for its abatement and removal, may be abated and removed by the means and proceedings provided by law for the abatement or removal of public nuisances.

History: En. Sec. 2, Ch. 63, L. 1925; amd. Sec. 2, Ch. 85, L. 1931; amd. Sec. 52, Ch. 12, L. 1977.

Amendments

The 1977 amendment deleted "now, or hereafter to be" before "provided by law"; and made minor changes in phraseology.

46-1709. (3400.3) Castration of animals running at large, etc.

Notice to Owner

The notice requirements of this section were irrelevant to an action against the owner of a trespassing mule for personal

injuries sustained in attempting to remove the mule. *Ekwortzel v. Parker*, 156 M 477, 482 P 2d 559.

46-1717. (3403) Female breeding cattle, purebred bull to accompany.

(1) Any person, persons, firm, company, or corporation allowing or permitting female breeding cattle to run at large upon the public ranges or national forest reserves in the state of Montana must place upon the range or national forest reserve one purebred graded bull of a recognized beef type, not less than 15 months or more than 8 years of age, for every 30 head of female breeding cattle pastured upon such range or national forest reserve. Any two or more such users of the public range or national forest reserve may join together in furnishing such bull when the aggregate number of female breeding cattle turned loose upon the same range or national forest reserve by such two or more users thereof does not exceed 30 head.

(2) A purebred bull as contemplated by this act must be a bull having a registration certificate from the breeding association of its particular breed. A graded bull, as defined in this act, shall be a purebred bull selected by a committee of permittees.

History: En. Sec. 2, Ch. 62, L. 1917; amd. Sec. 1, Ch. 42, L. 1919; re-en. Sec. 3404, R. C. M. 1921; amd. Sec. 1, Ch. 40, L. 1957; amd. Sec. 53, Ch. 12, L. 1977.

Amendments

The 1977 amendment inserted the subsection designations; substituted "a purebred bull" in the last sentence of subsection (2) for "one"; and made minor changes in style, phraseology and punctuation.

46-1720. [Transferred from Title 94.]

Compiler's Notes

This section was originally numbered 94-3522. Section 29, Ch. 513, Laws of 1973 renumbered it to appear in this

title. Because there has been no change in text, the section is not reprinted here but may be found in bound Volume Eight as sec. 94-3522.

CHAPTER 18—ROUNDUP AND SALE OF ABANDONED HORSES

Section 46-1801. Definitions.

46-1802. Abandoned horses on public range declared public nuisance subject to condemnation—right of owner.

46-1804. Notice of holding roundup—publication.

46-1801. (3406.1) Definitions. Unless the context requires otherwise, in this act:

(1) "Abandoned horse" means a horse, mare, gelding, filly, jack, mule, or other animal of the genus equus, one (1) year of age or over, and unbranded, or if branded, which has escaped assessment for taxation for the year immediately preceding its impounding as provided for in this act, and running at large on the open range of this state, including foals running with dams coming within the above definition. An animal not bearing a decipherable brand which is recorded with the department of livestock is considered unbranded.

(2) "Open range" means all lands in this state not inclosed by a fence. The term "open range" includes all highways outside of private inclosures and used by the public, whether the highways have been formally dedicated to the public or not.

(3) "Person" includes individuals, associations, persons, and corporations.

History: En. Sec. 1, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927; amd. Sec. 148, Ch. 310, L. 1974.

Amendments

The 1974 amendment inserted the numerical subsection designations at the beginning of the paragraphs; substituted

"as provided for in this act" for "as hereinafter provided for" in subsection (1); substituted "with the department of livestock" for "in the office of the recorder of marks and brands" in the last sentence of subsection (1); and made minor changes in phraseology and punctuation throughout the section.

46-1802. (3406.2) Abandoned horses on public range declared public nuisance subject to condemnation—right of owner. It is unlawful for any person owning or having control of any horse to abandon the horse upon the open range in the state of Montana, and such horses so running at large upon the open range in the state are a public nuisance and a public menace and are condemned, subject to the right of the owner of any such abandoned horse to reclaim the same under the conditions hereinafter provided.

History: En. Sec. 2, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927; amd. Sec. 54, Ch. 12, L. 1977.

Amendments

The 1977 amendment substituted "own-

ing or having control of any horse to abandon the horse" for "to suffer or permit any abandoned horse to run at large"; and made minor changes in punctuation and phraseology.

46-1804. Notice of holding roundup—publication. Notice of the roundup shall be given by the board of county commissioners at least thirty (30) days before the date when the roundup begins. The notices shall be published at least once a week for three (3) successive weeks in some newspaper of general circulation, printed and published in the county in which the roundup is to be held, if a newspaper of this type is printed and published in the county. The notice shall be posted in at least five (5) public places, outside of the county seat of the county on public highways in the county or district, as the case may be, in which the roundup is to be held. Three (3) notices shall be posted in three (3) public places in the county seat, one of the notices shall be posted at the front door of the courthouse. The notices posted outside of the county seat are to be posted not less than two (2) miles apart and all posted notices are to be posted at least twenty (20) days before the date on which the roundup begins as stated in the notice. If no newspaper is printed and published in the county, publication in a newspaper is not required. At least twenty (20) days before the date on which the roundup is to begin, a copy of the notice shall be filed with the department, by the clerk of the board of county commissioners.

History: En. Sec. 4, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927; amd. Sec. 149, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "Montana livestock commission" in the last sentence; deleted a form for the notice; and made minor changes in phraseology and punctuation.

CHAPTER 19—BOUNTIES FOR KILLING WILD ANIMALS— KILLING DOGS INJURING LIVESTOCK

- Section 46-1901. Five per cent of county license money to be used for payment of bounty claims.
- 46-1902. Meaning of term "wild animal."
- 46-1903. Department to supervise destruction of predatory animals—co-operation with other agencies—administration of moneys.
- 46-1904. Disposal of proceeds from sale of skins, hides and specimens—presenting to museums.
- 46-1907. Bounty inspectors—form of claim—affidavits required—penalty for falsification—records.
- 46-1908. Bounty claims and certificates to be filed with department.
- 46-1909. Department to examine claims and certificates—approval or disapproval of claims.
- 46-1912. Use of funds remaining after payment of bounties—sale of furs, skins and specimens—presentation to museums.
- 46-1914. Levy of tax for purpose of paying for destruction of wild animals—limitation on levy.
- 46-1915. Penalty for fraudulent claims.

46-1901. (3414) Five per cent of county license money to be used for payment of bounty claims. For the purpose of providing for the payment of bounty claims five per cent of all license money collected by the several county treasurers of the state shall be paid over by said county treasurers to the state treasurer and shall by the latter be deposited in the earmarked revenue fund.

History: En. Sec. 3075, Pol. C. 1895; re-en. Sec. 1909, Rev. C. 1907; amd. Sec. 1, Ch. 13, L. 1921; re-en. Sec. 3414, R. C. M. 1921; amd. Sec. 97, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted "there is

hereby created a fund to be known as the state bounty fund which shall consist of" before "five per cent"; deleted "and said moneys" before "shall be paid over"; and substituted "the earmarked revenue fund" at the end of the section for "the state bounty fund."

46-1902. (3417.1) Meaning of term "wild animal." For the purpose of this act the term "wild animal" shall include coyote, lynx, and any other animal causing depredations upon livestock.

History: En. Sec. 1, Ch. 73, L. 1923; amd. Sec. 2, Ch. 27, L. 1974; amd. Sec. 2, Ch. 67, L. 1975; amd. Sec. 5, Ch. 235, L. 1977.

Amendments

The 1974 amendment deleted "wolver-

ine" and "mountain lion" from the definition of "wild animal."

The 1975 amendment deleted "wolf" from the definition of "wild animal."

The 1977 amendment deleted "bobcat" from the definition of "wild animal."

46-1903. (3417.2) Department to supervise destruction of predatory animals—co-operation with other agencies—administration of moneys. (1) The department of livestock shall conduct the destruction, extermination, and control of wild animals including coyote, lynx, and other wild animals predatory in nature and capable of killing, destroying, maiming, or injuring domestic livestock or domestic poultry; and the protection and safeguarding of livestock and poultry in this state, against depredations from these animals. The department shall formulate the practical pro-

grams for accomplishing these objectives in this state, and for carrying out the programs in an efficient and practical manner, responsive to the need for control in each area of this state. The department shall adopt rules applicable to predatory animal control, which are necessary and proper for the systematic destruction of the wild animals by hunting, trapping, and poisoning operations, and payments of bounties. The department shall make field, area, range, or other orders and instructions, including orders and instructions to hunter and trapper personnel and others, which are appropriate in the various areas, at different seasons of the year, taking into consideration the habits, presence, migrations, or movements of the animals, and their attacks on livestock and poultry, either singly or in packs or bands. The department shall cooperate with authorized representatives of the federal government, including the Biological Survey and the Fish and Wild Life Service, the department of fish and game, boards of county commissioners, voluntary associations of stockgrowers, sheepgrowers, ranchers, farmers, and sportsmen, and corporations and individuals, in the systematic destruction of wild animals by hunting, trapping, and poisoning operations.

(2) The department shall administer and expend for predatory animal extermination and control all money which is made available to it, including the money from the levy under 84-5214, and all money which is made available to the department by appropriations made by the legislature for predatory animal control by the department. The department shall expend the funds for predatory animal control by all effective means, including employment of hunters, trappers, and other personnel, procurement of traps, poisons, equipment, and supplies, and payment of bounties in the discretion of the department, responsive to the necessities of control in various areas of the state.

(3) This section does not interfere with or impair the power and duties of the department of fish and game in the control of predatory animals by the department of fish and game, as authorized by law, nor the obligation of the department of fish and game to expend its funds in cooperation with the department, for predatory animal control, as required by law. Funds of the department of fish and game for the cooperative predatory animal control shall be administered and expended by the department of fish and game.

History: En. Sec. 2, Ch. 73, L. 1923; amd. Sec. 1, Ch. 113, L. 1947; amd. Sec. 98, Ch. 147, L. 1963; amd. Sec. 21, Ch. 100, L. 1973; amd. Sec. 3, Ch. 27, L. 1974; amd. Sec. 150, Ch. 310, L. 1974; amd. Sec. 3, Ch. 67, L. 1975; amd. Sec. 6, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977.

Amendments

The 1963 amendment deleted references to the state bounty fund in subsection (2).

The 1973 amendment deleted references to section 9 of article XII, of the constitution of Montana in subsection (2).

Chapter 27, Laws of 1974, deleted "wolverine," "mountain lion," and "cougar" from the enumeration of predatory ani-

mals in the first sentence of subsection (1).

Chapter 310, Laws of 1974, changed the subsection designations from small letters to numerals; substituted references to "department of livestock" and "department" throughout the section for references to "Montana livestock commission" and "commission"; deleted former subsection (b) pertaining to an advisory committee appointed by the governor; and made minor changes in phraseology and punctuation throughout the section.

The 1975 amendment deleted "wolf" from the enumeration of predatory animals in the first sentence of subsection (1).

The 1977 amendment deleted "bobcat" (1); and made a minor change in phraseology from the enumeration of predatory animals in the first sentence of subsection

46-1904. (3417.3) Disposal of proceeds from sale of skins, hides and specimens—presenting to museums. Furs, skins, and specimens taken by hunters or trappers shall be sold by the department. The proceeds from the sales shall be credited to the earmarked revenue fund. The proceeds shall be used to carry out this act. Specimens may be presented, free of charge, to a state museum or institution.

History: En. Sec. 3, Ch. 73, L. 1923; amd. Sec. 99, Ch. 147, L. 1963; amd. Sec. 151, Ch. 310, L. 1974.

Amendments

The 1963 amendment deleted "whose salaries may be paid in whole or in part out of the fund herein created" which fol-

lowed "hunters or trappers"; and substituted "earmarked revenue fund" for "bounty fund."

The 1974 amendment substituted "department" for "livestock commission" and made minor changes in phraseology and punctuation.

46-1907. (3417.6) Bounty inspectors—form of claim—affidavits required—penalty for falsification—records. (1) The sheriff of a county and undersheriffs and deputy sheriffs located at the county seat, but not elsewhere, shall receive and examine skins and pelts presented for bounty in their respective counties. The sheriff shall receive ten cents (\$.10) for each skin examined, this amount to be paid by the owner of the skin. A sheriff, undersheriff, and deputy sheriff, to prevent fraud, shall carefully examine each skin presented. If the examination discloses that the scalp and ears with the skin from the entire head of the animal have not been severed, punched, patched, or marked, he shall, in the presence of the person presenting the skin, mark the skin by severing the skin from the head, including the ears, and then redeliver the skin to the person presenting it, and shall require an affidavit from the claimant that the claimant killed the animal. The affidavit shall be on forms prescribed by the department, and contain information the department requires. The officer shall require affidavits from two (2) resident taxpayers residing in the vicinity in which the animal was killed, setting forth that they are resident taxpayers on livestock, giving their post-office addresses and stating that they are personally acquainted with the person presenting the skin, and to their knowledge, the person did kill the animal from which the skin was taken within thirty (30) days preceding the offering of the skin for a bounty to the sheriff, undersheriff, or deputy sheriff to which it is presented. The officer shall at the same time make out and deliver to the person a certificate addressed to the county clerk of his county, and immediately deliver to the county clerk a duplicate of the certificate, showing the date, number, and kind of skins marked for severing, and the name of the person presenting the skins. The certificate shall also recite that the filing of the affidavits of taxpayers previously required has been done and the examination has been made as required. The certificate shall be signed by the officer in his official capacity. When a doubt exists as to the kind of skin presented, whether wolf or coyote, the certificate shall be issued for the lesser bounty. Each sheriff shall keep a record of all skins marked and severed, showing the date, number, and kinds and the names of the persons presenting the

skins. This record is an official record. The sheriff, undersheriff, or deputy sheriff may not perform any duties under this act except at the county seat.

(2) A taxpayer who makes a false certificate or affidavit under this section in a material portion is guilty of a felony, punishable the same as for the crime of perjury. The sheriff shall, not later than the fifteenth of each month, give to the county clerk and recorder a report setting forth the names of the persons presenting skins, with the number of the certificate, the kind and number of the skins presented. The sheriff shall report for each certificate which he has issued during the month.

(3) The county clerk shall, on receipt of each certificate, file the certificate in the order in which they are received, and safely keep them until the arrival of the skin or skins mentioned in the certificate. On receipt of the skin or skins he shall call to his assistance either the county treasurer, or, in his absence, the clerk of the district court, who, with both present, in order to prevent fraud, shall examine each scalp. If the examination discloses that the scalps agree with the number and kind of scalps, or lower jaw of mountain lion, mentioned in the certificate, the county clerk shall, in the presence of the treasurer or clerk of the district court, destroy the scalps by fire. The county clerk shall then make out and deliver to the person named in that certificate a second certificate showing the statement of the facts contained in the certificate to the sheriff, undersheriff, or deputy sheriff, with the additional statement of the examination made by him, and that he found the scalps to agree with the number and kind mentioned in the certificate of the sheriff, undersheriff, or deputy sheriff. In no case may a bounty certificate be issued by the county clerk for more scalps than are actually received and counted by him. The county clerk shall receive for each scalp, or mountain lion lower jaw which he accounts for, the sum of five cents (\$.05), to be paid quarterly by the state treasurer out of the bounty fund. The county clerk shall keep a record of all certificates received and issued, showing the date and description of the number and kind of hides, and the names of the persons presenting the hides, and this record is an official record. County clerks are required to send a report and statement to the department on or before the twentieth of each month.

History: En. Sec. 3, Ch. 109, L. 1925; amd. Sec. 152, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "shall require an affidavit from the claimant that the claimant killed the animal" for "shall require the following affidavit from the

claimant" at the end of the fourth sentence in subsection (1); substituted the fifth sentence in subsection (1) for a form of the affidavit; substituted "department" for "livestock commission" in the last sentence of subsection (3); and made minor changes in phraseology and punctuation throughout the section.

46-1908. (3417.7) Bounty claims and certificates to be filed with department. Bounty claims and certificates issued by the county clerks and recorders under section 46-1907 shall be filed with the department and registered in a book provided for that purpose.

History: En. Sec. 4, Ch. 109, L. 1925; amd. Sec. 153, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "department" for "livestock commission" in the caption and in the text of the section.

46-1909. (3417.8) Department to examine claims and certificates—approval or disapproval of claims. The department shall examine and investigate every bounty claim and certificate filed with the department. When it makes the examination and investigation, the department may require the holder of a certificate or claim to furnish the department with the additional evidence or proof about the certificate or claim which the department considers necessary. The evidence may be either oral or documented, as required by the department. The department shall, after making the examination and investigation, endorse on the certificate or claim its approval or disapproval of it, and if the certificate or claim or any part of it is disapproved, the endorsement shall state the reasons for the disapproval. If a certificate or claim is approved it shall be processed as provided by law.

History: En. Sec. 5, Ch. 109, L. 1925; amd. Sec. 23, Ch. 97, L. 1961; amd. Sec. 154, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted refer-

ences to "department" in the caption and throughout the section for references to "livestock commission" and "commission" and made minor changes in phraseology and punctuation.

46-1912. (3417.11) Use of funds remaining after payment of bounties—sale of furs, skins and specimens—presentation to museums. (1) If, at the end of a bounty paying season, there is surplus money available for the administration of this act surplus may be used to hire salaried hunters and trappers to hunt and trap predatory animals and to purchase and supply poison to be used for a poison campaign on predatory animals.

(2) All furs, skins, and specimens taken by hunters or trappers whose salaries are paid in whole or in part out of this money, shall be sold by the department, and the proceeds from these sales shall be credited to the earmarked revenue fund. These funds shall be used to carry out this act. Specimens may be presented, free of charge, to a state museum or institution.

History: En. Sec. 8, Ch. 109, L. 1925; amd. Sec. 100, Ch. 147, L. 1963; amd. Sec. 155, Ch. 310, L. 1974.

Amendments

The 1963 amendment substituted "of moneys available for the administration of Chapter 19, Title 46, R.C.M. 1947" for "in the state bounty fund" in the first paragraph; and in the second paragraph substituted "such moneys" for "the fund

herein created" and "earmarked revenue fund" for "bounty fund."

The 1974 amendment inserted the numerical subsection designations at the beginning of the paragraphs; substituted "this act" for "Chapter 19, Title 46, R. C. M. 1947" in subsection (1); substituted "department" for "livestock commission" in subsection (2); and made minor changes in phraseology and punctuation throughout the section.

46-1914. (3417.13) Levy of tax for purpose of paying for destruction of wild animals—limitation on levy. The department of revenue shall annually prescribe the levy recommended by the department to be made against livestock of all classes for paying for the destruction of wild animals killed in this state. The tax in any one year may not exceed 7.5 mills on the taxable value of the livestock. The money received shall be used only for the payment of claims for the destruction of wild animals and for the administration of this act, approved by the department. The money received for the taxes levied shall be sent annually with other taxes

to the state treasurer by the county treasurer of each county. When the money is received by the state treasurer, it shall be placed in the earmarked revenue fund and may then be paid out on claims approved under the law governing the payment of claims.

History: En. Sec. 10, Ch. 109, L. 1925; amd. Sec. 24, Ch. 97, L. 1961; amd. Sec. 101, Ch. 147, L. 1963; amd. Sec. 156, Ch. 310, L. 1974; amd. Sec. 42, Ch. 566, L. 1977.

Amendments

The 1963 amendment omitted a former first sentence which read: "There is hereby created a fund, to be known as the 'bounty fund'"; deleted "The tax commission, or" at the beginning of the present text; substituted "earmarked revenue fund" for "bounty fund" near the end of the section; and deleted "and all moneys in said fund are hereby appropriated for such purposes" at the end of the section.

The 1974 amendment substituted "The department of revenue" for "The department of state whose duty it is to fix tax levies" at the beginning of the section; substituted "department" for "livestock commission" in two places; and made minor changes in phraseology and punctuation.

The 1977 amendment substituted "7.5 mills on the taxable value" in the second sentence for "one and one-half (1½) mills on the assessed valuation"; deleted "for state purposes" after "other taxes" in the fourth sentence; and made minor changes in phraseology and punctuation.

46-1915. (3417.14) Penalty for fraudulent claims. Any person or persons who shall patch up any skin or scalp, or who shall present any punched or patched skin or scalp, or who shall bring in any skin or skins from other states or territory, with the intent to obtain the bounty on the same fraudulently, or any officer who shall sign any certificate herein provided for without first counting the skins and examining the same to determine the kind of skins, and to see that the skin from the scalp or head is properly severed and preserved as hereinbefore provided or shall evade or violate any provision of any law of the state of Montana relative to bounties or bounty claims, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine not exceeding one thousand dollars (\$1,000.00), or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment, and that two-thirds of the fine, if the same be collected, or can be collected, shall be given to the informer, and the balance be deposited in the earmarked revenue fund and used for the administration of this act.

History: En. Sec. 11, Ch. 109, L. 1925; amd. Sec. 102, Ch. 147, L. 1963.

posited in the earmarked revenue fund and used for the administration of this act" for "converted into the state bounty fund" at the end of the section.

Amendment

The 1963 amendment substituted "de-

CHAPTER 20—IMPOUNDING LIVESTOCK OR DOMESTIC ANIMALS

Section 46-2004. Service on department of livestock.

46-2007. Department to ascertain owner—notice.

46-2001. (5175) Impounding animals—duties of cities and towns.

Cross-Reference

Livestock running at large in emergency

road construction areas, secs. 32-2818 to 32-2820.

46-2004. (5178) Service on department of livestock. If the owner is unknown or if the owner is known but his post-office address is unknown, the notice shall be served on the department of livestock.

History: En. Sec. 4, Ch. 161, L. 1921; re-en. Sec. 5178, R. C. M. 1921; amd. Sec. 157, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment of livestock" for "secretary of the livestock commission" and "secretary of the Montana livestock commission" in the caption and in the text of the section and made minor changes in phraseology.

46-2007. (5181) Department to ascertain owner—notice. When the notice is served, the department shall ascertain the owner of the stock, if possible, and when the owner is ascertained, immediately furnish the owner with the information contained in the notice, and notify the city or town, its officers or agents, of the name and post-office address of the owner.

History: En. Sec. 7, Ch. 161, L. 1921; re-en. Sec. 5181, R. C. M. 1921; amd. Sec. 158, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "Secretary of livestock commission" in the caption; substituted "department" for "secretary of the Montana livestock commission" in the text of the section; and made minor changes in phraseology.

CHAPTER 21—SHEEP—PROTECTION FROM PREDATORY ANIMALS—TAX

Section 46-2102. County commissioners may require per capita license fee on sheep.
46-2104. Duty of county commissioners—petition of sheep owners.

46-2102. County commissioners may require per capita license fee on sheep. To defray the expense of such protection the board of county commissioners of any county shall have the power to require all owners or persons in possession of any sheep, coming one year old or over, in the county on the regular assessment date of each year to pay a license fee of not exceeding 50¢ per head of sheep so owned or possessed by him in the county; provided that all owners or persons in possession of any sheep, coming one year old or over, coming into the county after the regular assessment date and subject to taxation under the provisions of section 84-6008 shall also be subject to payment of the license fee herein prescribed. Upon the order of the board of county commissioners such license fees may be imposed by the entry thereof in the name of the licensee upon the property tax rolls of the county by the county assessor. Said license fees shall be payable to and collected by the county treasurer, and when so levied, shall be a lien upon the property, both real and personal of the licensee. In case the person against whom said license fee is levied owns no real estate against which said license fee is or may become a lien, then said license fee shall be payable immediately upon its levy and the treasurer shall collect the same in the manner provided by law for the collection of personal property taxes which are not a lien upon real estate. When collected, said fees shall be placed by the treasurer in the predatory animal control fund and the moneys in said fund shall be expended on order of the board of county commissioners of the county for predatory animal control only. The word "owners" or "persons" shall include natural persons, copartnerships, corporations, trusts and estates.

History: En. Sec. 2, Ch. 206, L. 1943; amd. Sec. 1, Ch. 123, L. 1949; amd. Sec. 1, Ch. 87, L. 1957; amd. Sec. 1, Ch. 87, L. 1965; amd. Sec. 1, Ch. 261, L. 1977.

Amendments

The 1965 amendment increased the

maximum license fee specified in the first sentence from ten to fifteen cents per head.

The 1977 amendment increased the license fee in the first sentence from 15¢ to 50¢.

46-2104. Duty of county commissioners—petition of sheep owners. In conducting a predatory animal control program, the board of county commissioners shall give preference to recommendations for such program and its incidents as made by organized associations of sheep growers in the county. Upon petition of the resident owners of at least 51% of the sheep in the county, as shown by the assessment rolls of the last preceding assessment, which petition shall be filed with the board of county commissioners on or before the first Monday in December in any year, such board shall establish the predatory animal control program, and cause said licenses to be secured and issued and the fees collected for the following year in such amount, not exceeding the limits of 50¢ per head of sheep as shown by said assessment rolls, as will defray the cost of administering the program so established. The license fee determined and set by the board, within said limits, shall remain in full force and effect from year to year without change, unless there is filed with the board a petition subscribed by the resident owners of at least 51% of the sheep in the county, as shown by the assessment rolls of the last assessment preceding the filing of the petition, for termination of the program and repeal of the license fee, in which event the program shall by order of the board of county commissioners be disestablished and the license fee shall not be further levied. If the resident owners of at least 51% of the sheep in the county either (a) petition for an increase in the license fee, subject always to the maximum limitation of 50¢ per head of sheep, or (b) petition for a decrease in the license fee then in force, the board of county commissioners shall upon receipt of any such petition fix a new license fee to continue from year to year and the program shall thereupon continue within the limits of the aggregate amount of the license fee as collected from year to year.

History: En. Sec. 4, Ch. 206, L. 1943; amd. Sec. 1, Ch. 24, L. 1949; amd. Sec. 2, Ch. 87, L. 1957; amd. Sec. 2, Ch. 87, L. 1965; amd. Sec. 2, Ch. 261, L. 1977.

Amendments

The 1965 amendment increased the maximum license fee specified near the

end of the second sentence and in clause (a) of the final sentence from ten to fifteen cents per head.

The 1977 amendment increased the maximum license fee specified near the end of the second sentence and in clause (a) of the final sentence from 15¢ to 50¢; and made minor changes in style.

CHAPTER 23—GRASS CONSERVATION—GRAZING DISTRICTS

- Section 46-2301. Grass Conservation Act—co-operation on Taylor Grazing Act.
 46-2302. Definitions.
 46-2307. Powers of department and board—state districts.
 46-2308. Appeals from decisions of state district to board—from board to district court.
 46-2309. Incorporation of state districts.
 46-2310. Articles of incorporation, contents.
 46-2311. Map or plat of district to be filed.

- 46-2312. Powers of state districts.
- 46-2313. Powers and duties of directors.
- 46-2314. Membership in district.
- 46-2315. Bylaws.
- 46-2316. District must lease available state land.
- 46-2317. Department to advise department of state lands and county commissioners.
- 46-2318. Amending articles of incorporation.
- 46-2322. Grazing preferences appurtenant to dependent commensurate property and commensurate property and method of transferring preferences to other lands.
- 46-2323. Subsequent lessees to compensate district for range improvements.
- 46-2325. Dissolution of district.
- 46-2331. Fees may be imposed by department against districts.
- 46-2332. Range for wild game animals.

46-2301. Grass Conservation Act—co-operation on Taylor Grazing Act.

This act may be cited as the "Grass Conservation Act." Its purpose is to provide for the conservation, protection, restoration, and proper utilization of grass, forage and range resources of the state of Montana, to provide for the incorporation of co-operative nonprofit grazing districts, to provide a means of co-operation with the secretary of the interior as provided in the federal act known as the Taylor Grazing Act and any other governmental agency or department having jurisdiction over lands belonging to the United States or other state or federal agency as well as agencies having jurisdiction over federal lands, to permit the setting up of a form of grazing administration which will aid in the unification or control of all grazing lands within the state where the ownership is diverse and the lands intermingled, and to provide for the stabilization of the livestock industry and the protection of dependent commensurate ranch properties as defined herein. The department of natural resources and conservation shall assist in carrying out the purposes of this act, act in an advisory capacity with the department of state lands and board of county commissioners, and supervise and co-ordinate the formation and operation of districts which may be incorporated under this act.

History: En. Sec. 1, Ch. 208, L. 1939; amd. Sec. 35, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "The department of natural resources and conservation shall" at the beginning of the last sentence for "This act provides a

state grass conservation commission to"; substituted "department of state lands" in the last sentence for "state land board"; inserted "board of" before "county commissioners" in the last sentence; and made minor changes in style, punctuation and phraseology.

46-2302. Definitions. Unless the context requires otherwise, in this act:

(1) "Department" means the department of natural resources and conservation provided for in Title 82A, chapter 15.

(2) "State district" means a nonprofit co-operative organization incorporated under this act, and its board of directors. "State district" also includes all lands, owned or controlled by the state district or its members.

(3) "Range" is the land within a grazing district upon which grazing permits are granted to maintain livestock through the established grazing period.

(4) "Permits" are evidence of grazing privileges granted by state districts.

(5) "Grazing preference" is a right to obtain a grazing permit from a state district. It is attached to dependent commensurate property except as provided in this act.

(6) "Board" means the board of natural resources and conservation provided for in section 82A-1509, except where the term is used in connection with the board of directors of a state district.

(7) "Person" means a natural person or persons, unincorporated associations, partnerships, corporations and governmental departments or agencies.

(8) "Commensurate property" means land privately owned or controlled which is not range as herein defined.

(9) "Dependent commensurate property" is commensurate property which requires the use of range in connection with it to maintain its proper use, and which produces or whose owner furnishes as part of his past customary practice the proper feed necessary to maintain livestock during the time other than the established grazing period on the range, and which has been used in connection with the range for a period of any three (3) years or for any two (2) consecutive years in the five (5) year period immediately preceding June 28, 1934; or in the case of districts organized after March 15, 1945, for a five (5) year period immediately preceding the date of organization of such districts.

(10) "Animal unit" means one (1) cow, one (1) horse, or five (5) sheep, six (6) months old or over.

(11) "Assessment" means a special levy imposed on permittee members by the state district to raise funds for specific purposes as provided in paragraph 6, section 46-2312. "Assessment" does not include fees.

History: En. Sec. 2, Ch. 208, L. 1939; amd. Sec. 1, Ch. 199, L. 1945; amd. Sec. 36, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted the introductory clause for one reading "The following words and phrases used in this act shall take the following interpretations"; substituted subdivision (1) for one reading "'The commission' means 'the Montana grass conservation commission'"; substituted subdivision (6) for one reading "'Secretary' means the state secretary to the state grass conservation

commission appointed under this act"; deleted a former twelfth subdivision reading "All other words used herein shall receive the usual and ordinary interpretation"; and made minor changes in style, punctuation and phraseology.

Nonprofit Corporation

Under subdivision 2 of this section, a grazing district is a nonprofit corporation rather than a subdivision of the state, so its powers are not necessarily limited to those expressly granted. Appeal of Two Crow Ranch, Inc., 159 M 16, 494 P 2d 915.

46-2303 to 46-2306. Repealed.

Repeal

Sections 46-2303 to 46-2306 (Secs. 3 to 6, Ch. 208, L. 1939; Sec. 1, Ch. 61, L. 1945; Sec. 1, Ch. 199, L. 1945; Sec. 1, Ch. 13, L. 1949; Sec. 1, Ch. 124, L. 1953; Secs. 1, 2, Ch. 257, L. 1955; Sec. 25, Ch. 97, L.

1961; Sec. 155, Ch. 147, L. 1963; Sec. 1, Ch. 24, L. 1967; Sec. 3, Ch. 237, L. 1967; Sec. 15, Ch. 93, L. 1969), relating to the Montana grass conservation commission, were repealed by Sec. 208, Ch. 253, Laws of 1974.

46-2307. Powers of department and board—state districts. (1) (a) The department may prepare and standardize various forms to be used by the state districts, and supervise or regulate the organization and operation of state districts. If a state district or the directors of a state district fail

to comply with an order of the department, the board may order a hearing thereon within the district or county and cite the directors of the district to appear before the board; if upon the hearing it appears that the directors refuse to perform the duties of their office as herein defined and as set forth in the articles of incorporation and the bylaws of the association, or refuse to comply with a lawful order of the department, the directors may be summarily removed by the board from office, and thereupon the district shall elect new officers. During the period until the election the department may operate and manage the affairs of the state district. The expense of operating and managing the affairs of a noncomplying state district shall be paid by the noncomplying state district before it may be reinstated.

(b) If a state district ceases to function and it appears to the board that the reinstatement and future operation of the district is no longer feasible, beneficial and desirable to those who own or control more than fifty per cent (50%) of the lands included in the district, the board, after a hearing thereon, and, upon thirty (30) days' notice in writing, published for two (2) consecutive weeks in a newspaper of general circulation in or nearest to the district, may dissolve the district. A notice of the dissolution shall be filed by the department with the secretary of state and the clerk and recorder of the county or counties in which the district is located.

(2) The department may:

(a) Issue citations directed to any person requiring his attendance before the department or the board, and subpoena witnesses and pay such expenses as would be allowed in a court action.

(b) Require an officer or director of a state district to submit records of the state district to the department for the purpose of aiding an investigation conducted by the department.

(c) Hold hearings on any matters affecting the department.

(d) Require state districts to furnish itemized financial reports annually.

(e) Co-operate and enter into agreements on behalf of a state district, with its consent, with any governmental subdivision, department, or agency, in order to promote the purposes of this act.

History: En. Sec. 7, Ch. 208, L. 1939; amd. Sec. 2, Ch. 199, L. 1945; amd. Sec. 37, Ch. 253, L. 1974.

Amendments

The 1974 amendment rewrote this sec-

tion, substituting references to the department and the board for references to the commission, deleting a preliminary paragraph, and making numerous deletions throughout the section. For prior version, see parent volume.

46-2308. Appeals from decisions of state district to board—from board to district court. (1) Notice of a decision of a state district shall be given in writing by the secretary of the state district to the interested parties or their attorneys by registered mail at the address as shown on the records of the district.

(2) A person affected by the decision of a state district may appeal therefrom to the board which shall hear and decide all those appeals. An appeal from the decision of the district to the board may be taken by filing written notice of the appeal with the department and by filing a copy of the notice of appeal with the secretary of the district and by serving a

copy of the notice of appeal by registered mail upon any interested parties who have appeared, or their attorneys, within sixty (60) days after receiving written notice of the decision of the district. The appellant shall also file with the department proof by affidavit of the filing and service of the notice of appeal. The appeal to the board shall be taken and review thereof had upon the record of any hearing conducted and considered by the state district; however, the board may, at its discretion, and for good cause shown, permit additional testimony to be submitted.

Any person who chooses to become a member of any state district is bound by all the provisions of the Grass Conservation Act and is limited to the statutory remedies therein contained and no court shall have jurisdiction to consider any right claimed under such act excepting only by judicial review from the final decision of the [board] as herein provided.

(3) The Montana Administrative Procedure Act (Title 82, chapter 42, R. C. M. 1947) applies to this act.

History: En. Sec. 8, Ch. 208, L. 1939; amd. Sec. 3, Ch. 199, L. 1945; amd. Sec. 1, Ch. 163, L. 1953; amd. Sec. 38, Ch. 253, L. 1974.

Compiler's Notes

The compiler has substituted the bracketed word "board" toward the end of the second paragraph of subsection (2) for "commission" to correct an apparent error.

Amendments

The 1974 amendment substituted "board" for "commission" throughout the

section; substituted "department" for "secretary of the commission" throughout the section; inserted subsection designations; deleted "and the decisions of said commission shall contain findings of fact which shall be conclusive except for the right to a judicial review as hereinafter provided" at the end of the first paragraph of subsection (2); deleted a former paragraph following the first paragraph of subsection (2) concerning an appeal from the decision of the commission to the district court, as set out in the paren. volume; added subsection (3); and made minor changes in punctuation and phraseology.

46-2309. Incorporation of state districts. If three (3) or more persons who own or control commensurate property and are livestock operators within the area proposed to be created into a state district decide to incorporate a state district, they shall submit a statement in writing to the department together with a plat showing the proposed boundaries of the area. The statement shall set forth the name of the proposed state district; the county or counties in which the proposed state district is located; and the names and addresses of all operators of land and livestock units within the area. The department may require any additional information it considers necessary. On receipt of the statement and plat and any additional information, the department shall fix a time and place of a hearing for approval within the district or county, which may not be less than thirty (30) days or more than sixty (60) days after receipt of the statement. The persons deciding to incorporate the state grazing district shall then cause notice of the hearing to be given by publishing a notice prescribed by the department once a week for two (2) consecutive weeks, the first publication to be at least thirty (30) days prior to the date of hearing, in a newspaper of general circulation in the area. The department, for and on behalf of the board, shall hear evidence offered in support of, or in opposition to, the creation of the state district, and shall make a full inquiry into the advisability of its creation; the record taken upon the hearing, together with the report of the department, shall be submitted to

the board. If the creation of the state district appears feasible, beneficial and desirable to those who own or control more than fifty per cent (50%) of the lands to be included in the district, the board may issue a certificate of approval.

History: En. Sec. 9, Ch. 208, L. 1939; amd. Sec. 4, Ch. 199, L. 1945; amd. Sec. 39, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" in the first five sentences for "commission"; substituted "department" for "secretary" and "board" for "commission" in the last two sentences; and made minor changes in style, punctuation and phraseology.

46-2310. Articles of incorporation, contents. Upon the issuance of the certificate of approval, three (3) or more persons who own or control commensurate property and are livestock operators within or near the proposed state district may prepare articles of incorporation and file them in the office of the secretary of state without payment of fees; the articles shall be accompanied by the certificate of approval and signed, sealed, and acknowledged. The articles, as prescribed by the department, shall substantially state the following:

(1) The name of the state district, the last four (4) words of which shall be "co-operative state grazing district."

(2) The county or counties in which the state district is located, and the place where the principal office and business of the state district will be conducted.

(3) The membership fee for each member of the state district which may not be more than five dollars (\$5).

(4) The term for which the state district is incorporated, which may not exceed forty (40) years.

(5) The names and residences of the persons who subscribe, together with a statement that each owns or controls commensurate property and is a livestock operator within the proposed state district.

(6) The powers of the state district, which may not be inconsistent with this act.

(7) The officers of the state district, their principal duties, and the principal duties of the board of directors.

(8) The purpose for which the state district is incorporated. If the articles substantially comply with the requirements set forth in this section and are accompanied by the certificate of approval, the secretary of state shall issue to the state district a certificate of incorporation. All amendments to articles of incorporation shall also be filed by the secretary of state without charge.

History: En. Sec. 10, Ch. 208, L. 1939; amd. Sec. 40, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "commission" in the preliminary paragraph; inserted "in this section" in subdivision (8) after "set forth"; and made minor changes in style, punctuation and phraseology.

46-2311. Map or plat of district to be filed. A state district shall, upon completion of its organization, file with the county clerk of each county in which its lands lie, a map or plat of the external boundaries of the state district and a copy of its articles of incorporation. If the boundaries of a state district are changed, and the changes are approved

by the board after a hearing thereon before the department, the state district shall file with the county clerk or clerks a map or plat indicating the changed boundaries. If the articles of incorporation are amended, the amendment shall be filed with the county clerk or clerks. A person herding or in control of livestock in the approximate vicinity of a state district shall ascertain the boundary lines of the district.

History: En. Sec. 11, Ch. 208, L. 1939; amd. Sec. 41, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "A state district" at the beginning of the section for "State grazing districts organized

under this act"; deleted "so created" near the end of the first sentence after "state district"; substituted "approved by the board after a hearing thereon before the department" in the second sentence for "approved by the commission"; and made minor changes in phraseology.

46-2312. Powers of state districts. A state district may:

(1) Purchase or market livestock and livestock products, and purchase supplies and equipment. These supplies may include among other things grass, grass seed, or forage, whether attached to and upon or severed from the land.

(2) Sue or be sued in its corporate name.

(3) Acquire forage producing lands, including agricultural lands when necessary to comply with the purposes and directives of this chapter, by lease, purchase, cooperative agreements, or otherwise, either from the United States, the state of Montana, county or counties in which the lands are located, or from private owners. All lands to which a state district may acquire title may be disposed of by exchange, sale or otherwise.

(4) Manage and control the use of its range and such agricultural lands. This power includes the right to determine the size of preferences and permit according to a fixed method which shall be stated in the bylaws and which shall take into consideration the rating of dependent commensurate property and the carrying capacity of the range, and may be subject to reservations, regulations and limitations under the terms of agreements between the state district and any agency of the United States. The state district may also allot range to members or nonmembers, and decrease or increase the size of permits if the range carrying capacity changes.

(5) Acquire or construct fences, reservoirs, or other facilities for the care of livestock, and lease or purchase lands for such purposes.

(6) Fix and determine the amount of grazing fees to be imposed on members or nonmembers for the purpose of paying leases and operating expenses and fix and determine the amount of assessments to be made on members on an animal unit basis for the purpose of acquiring lands by purchase, or for the purpose of constructing improvements in the state district.

(7) Specify the breed, quality, and number of male breeding animals which each member must furnish when stock is grazing in common in the state district.

(8) Employ and discharge employees, riders, and other persons necessary to properly manage the state district.

(9) Set up and maintain a reasonable reserve fund.

(10) Borrow money, and if necessary mortgage the physical assets of a state district to provide for operation and development, provided that at least eighty per cent (80%) of the permittee members of the state district consent in writing to the borrowing and the borrowing has been approved by the department. This subsection does not confer power upon a state district to mortgage the property of the individual members of the district.

(11) Change the boundaries of a district, merge with another state district organized under this act, or subdivide.

(a) A merger may not be made unless consented to by a majority of the members of each merging state district and approved by the board after a hearing thereon before the department.

(b) A subdivision may not be made unless consented to by a majority of the members in the affected area and approved by the board after a hearing thereon before the department.

(12) Regulate the driving of stock over, across, into, or through the range, and collect fees therefor. A state district may impose sanitary provisions, regulations and practices.

(13) Undertake reseeding and other approved conservation and improvement practices of depleted range areas or abandon farm lands and enter into cooperative agreements with the federal government or any other person for the reseeding or conservation and improvement practices.

History: En. Sec. 12, Ch. 208, L. 1939; amd. Sec. 42, Ch. 253, L. 1974; amd. Sec. 1, Ch. 22, L. 1977.

Amendments

The 1974 amendment deleted "organized under this act" at the beginning of the section after "district"; substituted "department" in subsection (10) for "state grass conservation board"; substituted "board" for "commission" in subdivisions (11)(a) and (11)(b); added "after a hearing thereon before the department" to the end of subdivisions (11)(a) and (11)(b); deleted "or an agency thereof" after "federal government" in subsection (13); substituted "person" in subsection (13) for "party or parties"; and made numerous

minor changes in style and phraseology.

The 1977 amendment inserted "including agricultural lands when necessary to comply with the purposes and directives of this chapter" in the first sentence of subsection (3); and added "and such agricultural lands" to the first sentence of subsection (4).

Assessments

Grazing district bylaw providing for assessment against members owning or in control of livestock trespassing on district land was valid implementation of power granted to grazing district by subdivision 4 of this section. *Appeal of Two Crow Ranch, Inc.*, 159 M 16, 494 P 2d 915.

46-2313. Powers and duties of directors. The directors of the state district shall manage and exercise the powers of the state district subject to its bylaws and to the regulation of the department as provided in this act.

History: En. Sec. 13, Ch. 208, L. 1939; amd. Sec. 43, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "department" for "commission"; and made a minor change in phraseology.

46-2314. Membership in district. (1) Membership in the district is limited to persons engaged in the livestock business who own or lease forage producing lands within or near the district, except that the agent

of a person entitled to membership in the district may become a member in place of his principal. If an agent becomes a member his qualifications for membership and his obligations to and the privileges in the district shall be measured by those his principal would have had if he had elected to become a member. An agent and his principal may not both be members of the district unless the agent has individual qualifications for membership which are separable from and independent of those of his principal. Permittee members only are entitled to vote on all issues submitted to a vote of the members. A permittee member has only one (1) vote. Voting by proxy may not be permitted. All members who possessed preferential grazing permits during the preceding grazing season or who possess such a permit at the time of voting shall be designated as permittee members.

(2) When a member disposes of a part of the lands or leases owned by him so that another person becomes the owner of the lands or leases and acquires the right to membership, then the rights and interest involved shall be determined by the directors of the state district with the approval of the department.

(3) Preferences or rights under this act through the creation of the district or the issuance of permits or preferences are statutory and do not create any vested right, title, interest or estate in or to the lands owned or controlled by the district excepting as herein provided.

History: En. Sec. 14, Ch. 208, L. 1939; amd. Sec. 2, Ch. 163, L. 1953; amd. Sec. 44, Ch. 253, L. 1974.

Amendments

The 1974 amendment deleted "partnerships, corporations and associations" and "association, partnership or corporation"

after "persons" and "person," respectively, in the first sentence of subsection (1); substituted "department" at the end of subsection (2) for "commission"; inserted the subsection designations; and made minor changes in punctuation and phraseology.

46-2315. Bylaws. A state district incorporated under this act shall within sixty (60) days after its incorporation adopt bylaws approved by the department. The bylaws may be amended or revised with the approval of the department.

History: En. Sec. 15, Ch. 208, L. 1939; amd. Sec. 45, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "department" for "commission" in both sentences of this section.

46-2316. District must lease available state land. State land situated within the boundaries of a grazing district created under this act, not otherwise disposed of by the department of state lands, must be leased by the grazing district at a reasonable rental, when offered for lease to the officers of the grazing district by that department; however, the officers of the grazing district may appear or submit evidence in writing before the department of state lands and show reason and cause for a change in the rental. If there is cause, the department of state lands may reappraise the land in question. The department of natural resources and conservation shall require that all state districts comply with this section.

History: En. Sec. 16, Ch. 208, L. 1939; amd. Sec. 46, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "department of state lands" and "department"

in the first two sentences for "state board of land commissioners"; substituted "department of natural resources and con-

servation" in the last sentence for "grass conservation commission"; and made minor changes in phraseology.

46-2317. Department to advise department of state lands and county commissioners. The department may act in an advisory capacity to the department of state lands and boards of county commissioners for the purpose of working out uniform plans for the use of lands lying within or without the boundaries of state districts, in conformity with recognized conservation and stabilization policies.

History: En. Sec. 17, Ch. 208, L. 1939; amd. Sec. 47, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted the present caption for one which read "Commission to advise board of land commissioners and county commissioners"; sub-

stituted "department" at the beginning of the section for "Montana grass conservation commission"; substituted "department of state lands" for "state board of land commissioners"; substituted "state districts" for "grazing districts"; and made a minor change in phraseology.

46-2318. Amending articles of incorporation. (1) A state district may amend its articles of incorporation by a two-thirds (2/3) vote of all members present at any regular or special meeting of its members and the approval of the department; the only notice of the meeting which is necessary is the notice of meetings of members as required by the bylaws of the district. The amended articles of incorporation and bylaws shall be submitted to the department for approval. Upon approval, the department shall issue a certificate of approval. The amended articles of incorporation shall be filed by the secretary of state without charge, but may not be filed unless accompanied by the certificate of approval.

(2) Upon the filing of the amended articles with the secretary of state and the proper county clerk or clerks, the district possesses the same powers and shall be subject to the same obligations as if incorporated under this act.

History: En. Sec. 18, Ch. 208, L. 1939; amd. Sec. 48, Ch. 253, L. 1974.

Amendments

The 1974 amendment deleted "Incorporated grazing associations must conform to this act" from the first part of the caption; inserted the subsection designations; deleted a former first sentence which read "All grazing associations incorporated under Chapter 66, Laws of 1933, of Chapter 195, Laws of 1935, shall within six months amend their articles of incorporation and their bylaws to conform with the provisions of this act"; substituted "A state district" at the beginning of subsection (1) for "Any district organ-

ized hereunder or any district or grazing association organized under prior laws as described in this section"; substituted "department" for "commission" throughout subsection (1); deleted "or association" at the end of the first sentence of subsection (1) after "district"; deleted "association or" in subsection (2) before "district"; deleted a sentence at the end of subsection (2) which read "Any association refusing to comply with the provisions of this section or failing to so comply within the time provided in this section may be dissolved by an order of the commission"; and made minor changes in style and phraseology.

46-2319. Repealed.

Repeal

Section 46-2319 (Sec. 19, Ch. 208, L. 1939), relating to the Mizpah Pumpkin

Creek grazing district, was repealed by Sec. 208, Ch. 253, Laws of 1974.

46-2322. Grazing preferences appurtenant to dependent commensurate property and commensurate property and method of transferring prefer-

ences to other lands. (1) Grazing preferences run with and are appurtenant to the dependent commensurate and commensurate property upon which they are based. They are not subject to devise, bequest, attachment, execution, lease, sale, exchange, transfer, pledge, mortgage, or other process, or transaction, except as provided in this section or in the bylaws of a state district. Upon application by a permittee, the state district with the approval of the department may allow a preference based on ownership or control of dependent commensurate or commensurate property to be transferred to other property of sufficient commensurability; however, in any transfer of preference from dependent commensurate or commensurate property controlled but not owned by the applicant, the applicant must have had control and use of the dependent commensurate or commensurate property and the preference appurtenant thereto for five (5) consecutive years and must have established and maintained the livestock operation upon which the dependency was established by use or priority immediately prior to the application for transfer. In addition, the transfer may not interfere with the stability of livestock operations or with proper range management and may not affect adversely the established local economy. A transfer may not be allowed without the written consent of the owner or owners and any encumbrances of the dependent commensurate or commensurate property from which the transfer is to be made, and a transfer is not effective until approved by the department. This section does not apply to trespass violations.

(2) When an application for transfer is presented to the board of directors of a state district, the secretary upon the direction of that board shall give notice thereof, setting forth in general the application and the time and place of a hearing thereon as fixed by the board. A copy of the notice shall be given or mailed to the applicant and shall be published for at least once a week for two (2) successive weeks prior to the hearing in a newspaper published or generally circulated within the district, and the notice shall also be posted for at least two (2) full weeks prior to the hearing in three (3) public places within the district. The date of hearing must be at least fifteen (15) days from the first publication of the notice. At the hearing the directors shall fully hear and determine the application and any objections thereto.

(3) Upon the allowance of a transfer under this section, the property from which the transfer is made loses its grazing preference to the extent of the preference transferred.

(4) All expenses involved under the application shall be borne by the applicant.

(5) When the land to which a preference is attached changes its control or ownership the preference changes with the land, and the person to which the control or ownership changes shall secure a nonuse permit or shall pay the usual grazing fees. If the person fails to secure a nonuse permit or refuses to pay the grazing fees, the preferences may be revoked by the state district. If a person controls but does not own land and does not secure a nonuse permit and refuses to pay grazing fees, the state district shall notify the owner of the land by registered mail that the preference attached to the land will be revoked unless the owner pays the

usual grazing fees to the state district within sixty (60) days from the time of receipt of the notice. The state district may revoke the preference if the owner or mortgagor does not pay the fees or secure a nonuse permit.

(6) If a permittee fails to pay grazing fees or assessments levied by the state district, or fails to obtain a nonuse permit or violates any of the rules and regulations of the state district, the state district may notify the permittee and owner of the land by registered mail that the preference attached to the land will be revoked unless the grazing fees or assessments are paid or the permittee ceases to violate the rules and regulations laid down by the district within sixty (60) days from the time of receipt of the notice. The state district may revoke the preference if the permittee or owner fails to pay the charges or comply.

(7) When a preference is revoked, it is detached from the dependent commensurate or commensurate property to which it was formerly appurtenant, and it immediately shifts to the state district. The state district may then allocate it to either dependent commensurate or commensurate property in the manner provided by its bylaws.

(8) In all cases where notices are given permittees under this act by registered mail and addressed to the post-office address of the permittee as shown by the records of the state district, the notices shall be considered received by the permittee when deposited in the United States post office by the district or by the department.

History: En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974.

Amendments

The 1971 amendment deleted "owned or controlled by the permittee" following "transferred to other property" in the third sentence of the first paragraph; and made a minor change in punctuation.

The 1974 amendment inserted the subsection designations; substituted "depart-

ment" in two places in subsection (1) for "grass conservation commission"; inserted "for transfer" after "application" at the beginning of subsection (2); inserted "of directors of a state district" near the beginning of subsection (2) after "board"; substituted "state district" in subsection (8) for "grazing district"; substituted "department" at the end of subsection (8) for "commission"; and made numerous minor changes in style, punctuation and phraseology.

46-2323. Subsequent lessees to compensate district for range improvements. Subsequent lessees or owners of land shall compensate a state district for the value of range improvements constructed with the consent of the owner, upon lands leased by the state district. The value shall be the value at the expiration date of the lease. If the owner and the state district cannot agree as to the value, the state district may either remove or abandon the improvement. If the subsequent lessee and the state district cannot agree as to the value, it shall be fixed by the department.

History: En. Sec. 23, Ch. 208, L. 1939; amd. Sec. 50, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "department" for "commission"; and made minor changes in phraseology.

46-2325. Dissolution of district. A state district with the written consent of three-fourths ($\frac{3}{4}$) of its permittee members may at any time request the board of natural resources and conservation to dissolve the state district. When a hearing thereon has been held before the department and

the board's consent has been given, the directors shall distribute the assets of the state district, either in items of property or in cash or in both. Distribution shall first be made with the approval of the department to creditors up to the amount of their claims. Distribution shall then be made with the approval of the department to permittee members upon the basis of their proportionate interest in the assets. If assets must be liquidated, the directors shall offer them for sale at public auction after publication of a notice of the sale once a week for two (2) successive weeks in a newspaper of general circulation within the state district. A final report of all dissolution proceedings shall be made to the department by the directors. Upon the approval of the report by the department, the board shall order the state district dissolved.

History: En. Sec. 25, Ch. 208, L. 1939; amd. Sec. 6, Ch. 163, L. 1953; amd. Sec. 51, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "board of natural resources and conservation" in the first sentence for "commission"; substituted "When a hearing thereon has been held before the department and the board's consent" in the second sentence for "When such consent"; inserted "with

the approval of the department" in the third and fourth sentences; deleted a provision "that a distribution of any property must be made with the consent of the commission" from the end of the third and fourth sentences; substituted "department" in the last two sentences for "commission"; substituted "the board" in the last sentence for a reference to the commission; and made minor changes in style and phraseology.

46-2326. Running livestock at large or in herd, etc.

Assessments

In view of section 46-2327, grazing district was not limited to the remedies permitted by this section in case of trespassing livestock, but could provide by

its bylaws for assessments against its members controlling trespassing livestock. Appeal of Two Crow Ranch, Inc., 159 M 16, 494 P 2d 915.

46-2327. Remedies are supplemental.

Assessments

This section preserved grazing district's power to provide in its bylaws for assessments against members controlling tres-

passing livestock, despite the fact that section 46-2326 provides other remedies against trespass. Appeal of Two Crow Ranch, Inc., 159 M 16, 494 P 2d 915.

46-2328. Repealed.

Repeal

Section 46-2328 (Sec. 9, Ch. 199, L. 1945), a saving provision relative to privileges and immunities under the

Soldiers and Sailors Civil Relief Act of 1940, was repealed by Sec. 208, Ch. 253, Laws of 1974.

46-2330. Repealed.

Repeal

This section (Sec. 28, Ch. 208, L. 1939), relating to the state grass conservation

fund, was repealed by Sec. 242, Ch. 147, Laws 1963.

46-2331. Fees may be imposed by department against districts. The department may impose fees against the several state grazing districts of the state in an amount not in excess of ten cents (\$.10) per animal unit, based upon the number of animal units per year for which the district grants permits, to defray expenses incurred by the department in carrying out its powers and duties under this act. These fees shall be held in the earmarked revenue fund, to be expended by order and direction of the

department for the administration of the department's functions under this act. If a state district fails or refuses to pay the fee on or before the first day of October of each year, and after the district is provided with a full report from the department of all moneys collected and expended by it for its fiscal year next preceding that date, the department may compel and levy collection and payment by writ of mandate or other appropriate remedy against the state district.

History: En. Sec. 29, Ch. 208, L. 1939; amd. Sec. 1, Ch. 241, L. 1961; amd. Sec. 156, Ch. 147, L. 1963; amd. Sec. 1, Ch. 20, L. 1971; amd. Sec. 52, Ch. 253, L. 1974.

Amendments

The 1963 amendment substituted "earmarked revenue fund" for "state grass conservation fund, herein created" in the second sentence.

The 1971 amendment deleted from the end of the first sentence "and said state grass conservation commission * * * when so collected"; deleted "When such appropriation by the state of Montana is repaid" from the beginning of the second sentence; substituted "These fees" at the beginning of the second sentence for "the

balance of such funds"; deleted "further" before "administration of the commission" in the latter part of the second sentence; deleted "and thereafter said commission shall be maintained by funds obtained from the livestock fees hereinbefore provided" from the end of the second sentence; and substituted "October" for "May" in the last sentence.

The 1974 amendment substituted "department" for "commission" throughout the section; inserted "in carrying out its powers and duties under this act" at the end of the first sentence; inserted "functions under this act" at the end of the second sentence; and made minor changes in style, punctuation and phraseology.

46-2332. Range for wild game animals. In each state district a sufficient carrying capacity of range shall be reserved for the maintenance of a reasonable number of wild game animals, to use the range in common with livestock grazing in the district. The department may act in an advisory capacity to the department of fish and game in the protection of wildlife within the boundaries of all state districts. The department shall encourage the transfer of beaver from streams where they are doing damage to other streams where they are needed.

History: En. Sec. 30, Ch. 208, L. 1939; amd. Sec. 53, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "The department" at the beginning of the second and last sentences for "The Montana

grass conservation commission"; substituted "Department of fish and game" in the second sentence for "state fish and game commission"; substituted "state districts" at the end of the second sentence for "grazing districts"; and made a minor change in phraseology.

CHAPTER 24—RENDERING OR DISPOSAL PLANTS—LICENSING—REGULATION

- Section 46-2401. Licensing of rendering or disposal plants.
- 46-2402. Power of department to adopt and enforce rules.
- 46-2403. Power of department to restrain operation of rendering plant.
- 46-2404. Power of department to revoke license of rendering plant.
- 46-2405. Power to administer oaths, subpoena witnesses, and receive evidence.
- 46-2406. Penalty for violation.
- 46-2407. Dead or fallen animal rendering plants—definitions.
- 46-2408. Identification tags.
- 46-2409. Dead or fallen animal records.
- 46-2411. Production of dead or fallen animal record on demand—animal not to be removed during transportation—investigation.
- 46-2412. Disposal of hides—inspection—filing of dead or fallen animal record.

46-2401. Licensing of rendering or disposal plants. (1) It is unlawful to operate in this state a rendering or disposal plant or establishment that

is intended to be operated for the disposal of bodies or parts of bodies of animals or fowl in any manner, except for human consumption, without first securing a license from the department of livestock.

(2) The license expires on December 31 of the year in which it is issued. A license fee of five dollars (\$5) shall be charged for licenses issued under this act.

(3) All license fees collected shall be paid into the general fund of this state.

History: En. Sec. 1, Ch. 148, L. 1949; amd. Sec. 159, Ch. 310, L. 1974.

Amendments

The 1974 amendment inserted the numerical subsection designations at the

beginning of the paragraphs; substituted "department of livestock" for "livestock sanitary board" in subsection (1); and made minor changes in phraseology, punctuation and style.

46-2402. Power of department to adopt and enforce rules. The department may adopt and enforce rules or orders necessary for the supervision, control, and inspection of rendering or disposal plants or establishments, their standards and methods of operation and their sanitary conditions, and the supervision, control, and inspection of equipment of the plant, where the rendering or disposal plants or establishments are intended to be operated for the disposal of bodies, or parts of bodies, of dead animals or fowl in any manner, except for human consumption. Vehicles and equipment used for the transportation of these bodies, or parts of bodies, are subject to the rules or orders, adopted by the department which are applicable to the vehicles or equipment. This act does not apply to the slaughtering and handling of animals or fowl for human consumption.

History: En. Sec. 2, Ch. 148, L. 1949; amd. Sec. 160, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "department" for "livestock sanitary board" in the caption and in two places in the text of the section; substituted "adopt and

enforce rules" for "promulgate and enforce reasonable rules and regulations" in the caption; substituted "rules or orders" for "rules, regulations or orders" in two places in the text of the section; and made minor changes in phraseology and punctuation.

46-2403. Power of department to restrain operation of rendering plant. The department may restrain the operation of a rendering or disposal plant or establishment engaged in the collection or handling of the bodies, or parts of bodies, of dead animals or fowl, where the operation is carried on in violation of the laws of this state or the rules or orders of the department, after a hearing held on five (5) days' written notice of the hearing to the licensee. The restraining order may be issued without notice of hearing where, in the discretion of the department, the violation constitutes a menace to public health requiring immediate and summary abatement. The licensee may appeal to the district court, on giving written notice of appeal to the restraining authority within ten (10) days after service of the restraining order, whether the order is made on hearing or summarily. The written notice of appeal does not stay execution of the restraining order when the restraining order is issued without hearing to restrain a menace to public health requiring immediate and summary abatement. Where the restraining order is issued after a hearing, the

hearing before the district court is on the record, together with any additional evidence offered. Where the order is issued without hearing, the hearing before the district court is on evidence offered at the hearing. Where the appeal is from an order issued after hearing, the appellant shall pay the cost of the transcript, which must be filed not more than thirty (30) days from the date of filing the notice of appeal; however, the court may extend the time for filing the transcript in its discretion.

History: En. Sec. 3, Ch. 148, L. 1949; amd. Sec. 161, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted refer-

ences to "department" in the caption and throughout the section for references to "sanitary board" and "livestock sanitary board"; and made minor changes in phraseology and punctuation.

46-2404. Power of department to revoke license of rendering plant. A license to operate a rendering or disposal plant may be revoked at any time by the department when it determines that a person to whom the license is issued has failed to comply with any statute of this state or rules or orders of the department, and on hearing before the department, after ten (10) days' written notice. Service and filing of a notice of appeal to a district court stays execution of the order.

History: En. Sec. 4, Ch. 148, L. 1949; amd. Sec. 162, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted references to "department" in the caption and throughout the section for references to "livestock sanitary board"; deleted a reference to the authority of the state veter-

inary surgeon to revoke licenses in the first sentence; deleted a provision pertaining to the licensee's right to appeal to the district court; deleted a provision pertaining to the hearing in the district court; deleted a provision for payment of the costs and filing of the transcript by the appellant; and made minor changes in phraseology and punctuation.

46-2405. Power to administer oaths, subpoena witnesses, and receive evidence. Hearings held under this act, for either revocation of licenses or to restrain operation, shall be held by the department, and the department or its agent may administer oaths, subpoena witnesses, and receive evidence in order to carry out this act.

History: En. Sec. 5, Ch. 148, L. 1949; amd. Sec. 163, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "livestock sanitary board" in two places and made minor changes in phraseology.

46-2406. Penalty for violation. Operation of a rendering or disposal plant or establishment without a license from the department, or operation of a rendering or disposal plant or establishment in violation of a restraining order, or after revocation of a license constitutes a misdemeanor, punishable by a fine of not less than fifty dollars (\$50) nor more than two hundred fifty dollars (\$250) for each day of illegal operation.

History: En. Sec. 6, Ch. 148, L. 1949; amd. Sec. 164, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "livestock sanitary board" and made minor changes in phraseology and punctuation.

46-2407. Dead or fallen animal rendering plants—definitions. When used in this act:

(1) "Dead or fallen animal" means the carcass or dead body of a cow, ox, bull, stag, calf, steer, heifer, horse, mule, mare, colt, foal or filly, the continued existence of which would create a public nuisance and constitute a hazard to the public health, which is not killed for human consumption, and is to be salvaged for the purpose of obtaining the hide and grease or fat from the animal.

(2) "Licensed rendering plant" and "licensed renderer" mean a person, copartnership, association, or corporation which is engaged in the disposal of dead or fallen animals and which is licensed by the department.

History: En. Sec. 1, Ch. 87, L. 1949; amd. Sec. 165, Ch. 310, L. 1974.

Amendments

The 1974 amendment changed the subdivision designations from small letters

to numerals; substituted "department" for "livestock sanitary board of the state of Montana" at the end of subdivision (2); and made minor changes in phraseology and punctuation throughout the section.

46-2408. Identification tags. Licensed rendering plants shall provide themselves with serially numbered metal identification tags of a size and design prescribed by the department and in a number series assigned by the department.

History: En. Sec. 2, Ch. 87, L. 1949; amd. Sec. 166, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted refer-

ences to "department" for references to "livestock commission of the state of Montana" and "secretary of the livestock commission."

46-2409. Dead or fallen animal records. When a licensed renderer or his agent receives a dead or fallen animal, he shall present to the person, corporation, or association which has requested him to remove the dead or fallen animal, a dead or fallen animal record. The record shall be on forms prescribed by the department and contain information the department may, by rule, require. The report shall be executed in quadruplicate, the original copy shall accompany the carcass and hide until the hide is officially inspected for marks and brands, the duplicate shall be retained by the licensed renderer for the time which the department in its discretion requires, the triplicate shall be filed within seven (7) days after its execution and without cost in the office of the county clerk and recorder of the county in which the animal is received by the licensed renderer or his agent, and the quadruplicate shall be retained by the person, corporation, or association which requested removal of the dead or fallen animal.

History: En. Sec. 3, Ch. 87, L. 1949; amd. Sec. 167, Ch. 310, L. 1974.

Amendments

The 1974 amendment inserted the sec-

ond sentence; deleted a form for the dead or fallen animal record; substituted "department" for "livestock commission" in the last sentence; and made minor changes in phraseology and punctuation.

46-2411. Production of dead or fallen animal record on demand—animal not to be removed during transportation — investigation. A licensed renderer or his agent who has received a dead or fallen animal, on demand of a livestock inspector, sheriff, undersheriff, deputy sheriff, or other peace officer, shall produce for inspection of the officer, an executed dead or

fallen animal record identifying each dead or fallen animal which he is transporting when the demand is made. Failure to produce the executed dead or fallen animal record on demand constitutes a misdemeanor punishable, as provided in this act. Under no circumstances may a licensed renderer or his agent endanger the public health by removing or being required to remove any dead or fallen animals from the vehicle in which they are being transported until the vehicle arrives at a licensed rendering plant where the dead or fallen animal shall be handled and disposed of in conformity with the rules of the department. If a livestock inspector, sheriff, undersheriff, deputy sheriff, or other peace officer has probable cause to believe the dead or fallen animals being transported by a licensed renderer or his agent were obtained by a commission of a felony, he may take the licensed renderer or his agent, as well as the vehicle, into custody and proceed with the licensed renderer or his agent to the rendering plant of the licensed renderer, where inspection of marks and brands and immediate investigation shall be made.

History: En. Sec. 5, Ch. 87, L. 1949; amd. Sec. 168, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "as provided in this act" for "as hereinafter

provided" at the end of the second sentence; substituted "rules of the department" for "rules and regulations of the livestock sanitary board" at the end of the third sentence; and made minor changes in phraseology and punctuation.

46-2412. Disposal of hides—inspection—filing of dead or fallen animal record. When a licensed renderer or his agent disposes of the hides from dead or fallen animals, the hides shall be handled and inspected for marks and brands in conformity with Title 46, chapter 11. The sheriff, deputy sheriff, person designated by the board of county commissioners, or the agent of the department who makes the inspection for marks and brands in conformity with Title 46, chapter 11, shall complete the original dead or fallen animal record which accompanies the hide by inserting his inspector's tag number. He shall file the completed original dead or fallen animal record without cost in the office of the county clerk and recorder, together with the duplicate certificate of inspection required to be filed under Title 46, chapter 11.

History: En. Sec. 6, Ch. 87, L. 1949; amd. Sec. 169, Ch. 310, L. 1974; amd. Sec. 55, Ch. 12, L. 1977.

Amendments

The 1974 amendment substituted "Title 46, chapter 11" for "sections 46-1101, 46-1102, 46-1106 to 46-1111" in three places; substituted "department" for "live-

stock commission" in the second sentence; and made minor changes in phraseology and punctuation.

The 1977 amendment inserted "the agent of" before "the department" in the second sentence; and substituted "Title 46, chapter 11" for an erroneous reference to "Title 46, chapter 26" in the second sentence.

CHAPTER 25—ARTIFICIAL INSEMINATION OF ANIMALS AND POULTRY

Section 46-2505. Act to be administered by Montana department of livestock.
46-2515. Only certain sires to be used for artificial insemination.

46-2501. Repealed.

Repeal

Section 46-2501 (Sec. 1, Ch. 37, L. 1953), relating to purpose of the artificial in-

semination law, was repealed by Sec. 3, Ch. 102, Laws 1973.

46-2504. Repealed.

Repeal Section 46-2504 (Sec. 4, Ch. 37, L. 1953), requiring a license to practice artificial insemination, was repealed by Sec. 3, Ch. 102, Laws 1973.

46-2505. Act to be administered by Montana department of livestock. This act shall be administered by the department of livestock and in addition to any powers now conferred by law the department of livestock shall have the following powers and duties:

(a) To promulgate such reasonable rules, regulations, and orders not contrary to the provisions of this act, when required, as may be necessary for the proper administration of this act, specifically including, but not limited to, rules, regulations, and orders relating to the means for preservation of semen and the use of semen imported into the state of Montana from other states, territories, and possessions of the United States and foreign countries.

History: En. Sec. 5, Ch. 37, L. 1953; amd. Sec. 2, Ch. 102, L. 1973. and (d); and redesignated former subdivision (e) as (a).

Amendments

The 1973 amendment substituted "department of livestock" for "livestock sanitary board" in the preliminary clause; deleted former subdivisions (a), (b), (c),

Repealing Clause

Section 3 of Ch. 102, Laws 1973 read "Sections 46-2501, 46-2504, 46-2506, 46-2507, 46-2508, 46-2509, 46-2510, 46-2511, 46-2512, 46-2513, and 46-2514, R. C. M. 1947, are hereby repealed."

46-2506 to 46-2514. Repealed.**Repeal**

Sections 46-2506 to 46-2514 (Secs. 6 to 14, Ch. 37, L. 1953), relating to licensing and the practice of artificial insemination, were repealed by Sec. 3, Ch. 102, Laws 1973.

46-2515. Only certain sires to be used for artificial insemination. (1) All sires used for artificial insemination must be free from brucellosis, vibriosis, trichomoniasis, dourine, posthitis, pullorum disease, other transmissible, infectious, contagious diseases, transmissible hereditary malformations, and other detrimental or undesirable characteristics. Proof of fitness of these sires shall be provided to the department by the owner or parties providing the sires for artificial insemination.

(2) Semen imported into this state may not be used by any artificial inseminator until proof is made to the satisfaction of the department that the sire from which the semen was taken was free from the above-mentioned diseases.

History: En. Sec. 15, Ch. 37, L. 1953; amd. Sec. 1, Ch. 102, L. 1973; amd. Sec. 170, Ch. 310, L. 1974. ment of livestock" for "livestock sanitary board" throughout the section.

Amendments

The 1973 amendment deleted "purity of breed" from the second sentence of the first paragraph and substituted "department of livestock" for "department of livestock" throughout the section; and made minor changes in phraseology and punctuation.

CHAPTER 26—REGULATION OF INDUSTRY TREATING OR FEEDING GARBAGE TO SWINE AND OTHER ANIMALS

Section 46-2602. Licenses.

- 46-2603. Applications for licenses.
- 46-2604. Power to adopt rules.
- 46-2605. Entry of premises for inspection—keeping of records.
- 46-2606. Power of department and board to restrain operation of garbage feeder.
- 46-2607. Power to revoke license of garbage feeder.
- 46-2608. Power to administer oaths, subpoena witnesses, and receive evidence.
- 46-2609. Cooking or other treatment of garbage.
- 46-2610. Garbage originating on or removed from airplanes may not be treated or fed.

46-2602. Licenses. (1) It is unlawful to handle, prepare, cook, or otherwise treat garbage to feed to swine or other animals, or to feed garbage to swine or other animals, without first securing a license for that purpose from the department of livestock. One license, issued to the entrepreneur, corporation, or individual responsible for a particular garbage feeding enterprise covers all garbage feeders concerned with the enterprise. The license provided for in this section expires on December 31, of the year in which it is issued. A license fee of five dollars (\$5) shall be charged for all licenses issued under this act. All license fees collected shall be paid into the general fund of this state.

(2) This act does not apply to a person who feeds only his own household garbage to swine or other animals.

History: En. Sec. 2, Ch. 63, L. 1953; amd. Sec. 171, Ch. 310, L. 1974.

Amendments

The 1974 amendment changed the subsection designations from small letters

to numerals; substituted "department of livestock" for "livestock sanitary board" at the end of the first sentence of subsection (1); and made minor changes in phraseology and punctuation.

46-2603. Applications for licenses. A person desiring to obtain a license to feed garbage to swine or other animals shall make a written application for the license to the department under the rules or orders prescribed by the department.

History: En. Sec. 3, Ch. 63, L. 1953; amd. Sec. 172, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "department under the rules or orders pre-

scribed by the department" for "livestock sanitary board in accordance with the rules, regulations or orders prescribed by said board applying to such applications" at the end of the section.

46-2604. Power to adopt rules. The department shall administer and enforce this act, and may adopt and enforce rules or orders necessary for the supervision, control, and inspection of persons who handle, prepare, cook, or otherwise treat garbage to feed to swine or other animals or who feed garbage to swine or other animals. The rules or orders shall apply to and govern the method of applying for a license, standards and methods of operation, sanitary conditions of premises where garbage is treated for feeding or fed, the control and inspection of equipment used to store, treat, or feed garbage and equipment, including vehicles used for the transportation of garbage.

History: En. Sec. 4, Ch. 63, L. 1953; amd. Sec. 173, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "The department" for "The livestock sanitary

board" at the beginning of the section; substituted references to "rules or orders" throughout the section for references to "rules, regulations or orders"; and made minor changes in phraseology and punctuation.

46-2605. Entry of premises for inspection—keeping of records. (1)

An authorized representative of the department may enter at reasonable times on private or public property to inspect and investigate conditions relating to the treating of garbage to be fed, or the feeding of garbage, to swine or other animals.

(2) An authorized representative of the department may examine records or memoranda pertaining to the treatment or feeding of garbage to swine or other animals. The department may require maintenance of records it considers necessary, relating to the operation of equipment for and procedure of treating or feeding garbage to swine or other animals, and may require copies of the records to be submitted to the department periodically.

History: En. Sec. 5, Ch. 63, L. 1953; amd. Sec. 174, Ch. 310, L. 1974.

Amendments

The 1974 amendment changed the subsection designations from small letters to

numerals; substituted references to "department" throughout the section for references to "livestock sanitary board"; and made minor changes in phraseology and punctuation.

46-2606. Power of department and board to restrain operation of garbage feeder. The department may restrain the operation of a licensed garbage feeder whose operation is carried on in violation of the laws of this state or the rules or orders of the department, after a hearing held on five (5) days' written notice of the hearing to the licensee. The restraining order may be issued without notice of hearing where, in the discretion of the department, the violation constitutes a menace to public or animal health requiring immediate and summary abatement. The licensee may appeal to the district court, on giving written notice of appeal to the restraining authority within ten (10) days after service of the restraining order, whether the order is made on hearing or summarily. The written notice of appeal does not stay execution of the restraining order when the restraining order is issued without hearing to restrain a menace to public health requiring immediate and summary abatement. Where the restraining order is issued after hearing, the hearing before the district court is on the record, together with additional evidence offered. Where the order is issued without hearing, the hearing before the district court shall be upon evidence offered before the court.

History: En. Sec. 6, Ch. 63, L. 1953; amd. Sec. 175, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "department and board" for "sanitary board" in the caption; substituted "The department may restrain" for "The livestock sanitary board or its authorized agent is hereby authorized and empowered to restrain" at the beginning of the section;

substituted "rules or orders of the department" for "rules, regulations, or orders of the livestock sanitary board" in the first sentence; substituted "in the discretion of the department" for "in the discretion of the sanitary board" in the second sentence; deleted provisions pertaining to payment of the costs and filing of the transcript by the appellant; and made minor changes in phraseology and punctuation.

46-2607. Power to revoke license of garbage feeder. The licenses to feed garbage to swine or other animals may be revoked at any time by the department when it determines that a person to whom the license is issued has failed to comply with the laws of this state, or rules or orders of the department, and on a hearing before the department, after ten (10) days' written notice. An appeal to the district court, stays execution of an order of the department revoking a license.

History: En. Sec. 7, Ch. 63, L. 1953; amd. Sec. 176, Ch. 310, L. 1974.

Amendments

The 1974 amendment deleted reference to the "sanitary board" in the caption; substituted "revoked at any time by the department" for "revoked, at any time by the livestock sanitary board or the state veterinary surgeon"; substituted "rules or orders of the department" for "rules, regulations or orders of the live-

stock sanitary board"; substituted "hearing before the department" for "hearing before the revoking authority"; deleted a sentence pertaining to the licensee's right to appeal to the district court; deleted a provision pertaining to the hearing before the district court; deleted provisions for payment of the costs and filing the transcript by the appellant; and made minor changes in phraseology and punctuation.

46-2608. Power to administer oaths, subpoena witnesses, and receive evidence. The department or its agent may administer oaths, subpoena witnesses, and receive evidence in order to carry out this act.

History: En. Sec. 8, Ch. 63, L. 1953; amd. Sec. 177, Ch. 310, L. 1974.

Amendments

The 1974 amendment deleted "Hearings held under this act, for either revocation

of licenses or to restrain operation, shall be held by the livestock sanitary board or its duly authorized agent" at the beginning of the section; substituted "department" for "livestock sanitary board"; and made minor changes in phraseology.

46-2609. Cooking or other treatment of garbage. All garbage, regardless of previous processing, shall, before being fed to swine or other animals, be thoroughly heated to at least 212° F. for at least thirty (30) minutes, unless treated in some other manner which is approved in writing by the department as being equally effective for the protection of public and animal health.

History: En. Sec. 9, Ch. 63, L. 1953; amd. Sec. 178, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "department" for "livestock sanitary board" and made minor changes in phraseology.

46-2610. Garbage originating on or removed from airplanes may not be treated or fed. Garbage originating on or removed from airplanes landing in this state may not be treated for feeding or be fed to swine or other animals. The powers granted in section 46-2605 to the department to enter on private or public property for the purpose of inspecting and investigating conditions relating to the treating of garbage to be fed to swine or other animals or the feeding of garbage to swine or other animals include the inspection and investigation of garbage disposal methods employed at airports and all facilities at airports and aircraft.

History: En. Sec. 10, Ch. 63, L. 1953; amd. Sec. 179, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "to

the department" for "to representatives of livestock sanitary board" in the second sentence and made minor changes in phraseology and punctuation.

CHAPTER 27—COUNTY LIVESTOCK PROTECTIVE COMMITTEES

- Section 46-2703. Powers and duties of committee.
 46-2704. Tax levy—special fund.
 46-2705. Special livestock deputy—duties—compensation.
 46-2706. Discontinuing county livestock protective committee.

46-2703. Powers and duties of committee. The county livestock protective committee shall advise, assist, and co-operate with the department of livestock, the board of county commissioners, the sheriff and all other public officials or police officers who have duties pertaining to hide and brand inspection, apprehension of livestock rustlers, the prevention of rustling, enforcement of laws governing the movement and sale of livestock, the treatment and prevention of livestock diseases, and other matters which are of interest and value to the livestock industry in the county.

History: En. Sec. 3, Ch. 168, L. 1953; partment of livestock” for “Montana livestock commission” and made minor
 amd. Sec. 180, Ch. 310, L. 1974. changes in phraseology and punctuation.

Amendments

The 1974 amendment substituted “de-

46-2704. Tax levy—special fund. Said county livestock protective committee may recommend to the board of county commissioners the levy of a tax in an amount not to exceed twenty-five cents (25c) per head on all assessable cattle in the county on the first day of January and the board of county commissioners shall thereupon be empowered to levy such tax, to be collected as other taxes on personal property, and when collected to be deposited by the county treasurer in a special fund to be known as the stockmen’s special deputy fund, together with any other funds made available from county, state, federal or private sources for the purposes of this act.

History: En. Sec. 4, Ch. 168, L. 1953; **Amendments**
 amd. Sec. 1, Ch. 10, L. 1955; amd. Sec. 4,
 Ch. 388, L. 1975.

The 1975 amendment changed the date of assessment from the first Monday of March to the first day of January.

46-2705. Special livestock deputy—duties—compensation. The county livestock protective committee may recommend to the board of county commissioners the appointment of a special livestock deputy, satisfactory to the department and the sheriff, whose duties are to assist the department and the sheriff in the enforcement of hide and brand inspection laws, laws governing the movement and sale of livestock and the treatment and prevention of livestock diseases, laws pertaining to the apprehension of livestock rustlers and the prevention of rustling, and other laws which are of particular concern to the livestock industry of the county, particularly as regards cattle. The special livestock deputy may receive a commission from the department and appointment as a deputy from the sheriff of the county, and shall give the bond for the faithful performance of his duties as required from officers performing similar duties. The special livestock deputy shall receive compensation for his services and for mileage traveled in the performance of his duties in an amount set by the board of county commissioners, on the recommendation of the committee, to be paid from

the stockmen's special deputy fund and from the county general fund in the proportions set by the board of county commissioners.

History: En. Sec. 5, Ch. 168, L. 1953; amd. Sec. 181, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted refer-

ences to "department" throughout the section for references to "Montana livestock commission" and made minor changes in phraseology and punctuation.

46-2706. Discontinuing county livestock protective committee. Upon receipt of a petition or petitions signed as provided in section 46-2701, the board of county commissioners shall discontinue said county livestock protective committee, provided, however, that such action in discontinuing said committee shall not affect any levy made prior to the receipt of such petition or petitions, and the proceeds of any levy made shall be used for the purposes as in this act set out, and further providing that no district shall be discontinued so long as there is any outstanding indebtedness against it.

History: En. Sec. 6, Ch. 168, L. 1953; amd. Sec. 2, Ch. 204, L. 1967.

Amendments

The 1967 amendment substituted

"shall" for "may" before "discontinue"; and added "and further providing * * * indebtedness against it" at the end of this section.

CHAPTER 28—CATTLE PROTECTIVE DISTRICTS

- Section 46-2801. Formation of districts in two or more counties authorized—petition of cattle owners—declaration by county commissioners.
- 46-2802. Selection of cattle protective committee members.
- 46-2803. Powers and duties of protective committees.
- 46-2804. Tax levy—deposit of proceeds.
- 46-2805. Removal of area from protective district—discontinuance of district—levy saved.
- 46-2806. Formation of county district authorized—petition of cattle owners—declaration by county commissioners.
- 46-2807. Selection of cattle protective committee members.
- 46-2808. Powers and duties of protective committees.
- 46-2809. Tax levy—deposit of proceeds.
- 46-2810. Discontinuance of district—levy saved.

46-2801. Formation of districts in two or more counties authorized—petition of cattle owners—declaration by county commissioners. A cattle protective district embracing all or parts of two or more counties may be formed upon the filing of petitions by the cattle growers of such counties with the boards of county commissioners of each county to be wholly or partially included in the district. Such petitions must be signed by at least fifty-one per cent (51 %) of the cattle owners owning fifty-five per cent (55 %) of cattle for the protection of which the district is to be formed residing within the area designated as part of the district in each of the counties affected. Upon receipt of such a petition each board of county commissioners must within thirty (30) days declare the designated portion of its county a part of such cattle protective district and the district shall be formed immediately upon the action of the last board of county commissioners to act.

History: En. Sec. 1, Ch. 181, L. 1963.

Title of Act

An act to authorize the creation and

operation of cattle protective districts embracing all or portions of two or more counties, providing for the appointment of district cattle protective committees, providing for the powers, duties and financing of such cattle protective districts.

46-2802. Selection of cattle protective committee members. Each county wholly or partially included in such district shall be entitled to three (3) members of the district cattle protective committee who shall be chosen in the same manner as members of county cattle protective committees under section 46-2701, R.C.M. 1947.

History: En. Sec. 2, Ch. 181, L. 1963.

46-2803. Powers and duties of protective committees. District cattle protective committees shall be organized and have the same powers and duties as the county cattle protective committees organized under the provisions of Chapter 27, Title 46, R.C.M. 1947.

History: En. Sec. 3, Ch. 181, L. 1963.

46-2804. Tax levy—deposit of proceeds. Said district cattle protective committee may recommend to the board of county commissioners the levy of a tax in an amount not to exceed twenty-five cents (25c) per head on all assessable cattle in the district on the first day of January and the board of county commissioners shall thereupon be empowered to levy such tax, to be collected as other taxes on personal property, and when collected to be deposited in the county treasury of one of the counties in the district, to be selected by the district cattle protective committee, in a special fund to be known as the stockmen's special deputy fund, together with any other funds made available from county, state, federal or private sources for the purposes of this act.

History: En. Sec. 4, Ch. 181, L. 1963; **Amendments**
amd. Sec. 5, Ch. 388, L. 1975.

The 1975 amendment changed the assessment date from the first Monday of March to the first day of January.

46-2805. Removal of area from protective district—discontinuance of district—levy saved. Upon receipt of a petition or petitions signed in the same number and the same manner as the petition to form the district provided for in section 46-2801 of this act, a board of county commissioners shall remove the area in its county from the cattle protective district or the boards of county commissioners of all of the counties affected may discontinue the entire cattle protective district, provided, however, that such action in discontinuing said district or part of district shall not affect any levy made prior to the receipt of such petition or petitions, and the proceeds of any levy made shall be used for the purposes as in this act set out, and further providing, that no district or portion of such district shall be discontinued so long as there is any outstanding indebtedness against it.

History: En. Sec. 5, Ch. 181, L. 1963;
amd. Sec. 1, Ch. 204, L. 1967.

Amendments

The 1967 amendment substituted "shall"

for "may" before "remove the area"; added "and further providing * * * indebtedness against it" at the end of the section; and made a minor style change.

46-2806. Formation of county district authorized—petition of cattle owners—declaration by county commissioners. A cattle protective district embracing part of one county in the state of Montana may be formed upon the filing of a petition by cattle growers within said district with the board of county commissioners in said county. Such petition must be signed by at least fifty-one per cent (51 %) of the cattle owners owning fifty-five per cent (55 %) of the cattle for the protection of which the district is to be formed residing within the area designated. Upon receipt of such petition, the board of county commissioners must within thirty (30) days declare the designated portion of its county a cattle protective district and the district shall be formed immediately thereafter.

History: En. Sec. 1, Ch. 91, L. 1965.

Title of Act

An act relating to the formation of a cattle protective district within any

county in the state of Montana and providing for its formation and for its powers and duties, including organization, tax levy, and discontinuance.

46-2807. Selection of cattle protective committee members. Each cattle protective district shall be entitled to three (3) members, who shall be chosen in the same manner as members of a county cattle protective committee under section 46-2701, R. C. M., 1947.

History: En. Sec. 2, Ch. 91, L. 1965.

46-2808. Powers and duties of protective committees. Such district cattle protective committees shall be organized and have the same powers and duties as the county cattle protective committees organized under the provisions of chapter 27, Title 46, R. C. M., 1947.

History: En. Sec. 3, Ch. 91, L. 1965.

46-2809. Tax levy—deposit of proceeds. Said district cattle protective committee may recommend to the board of county commissioners the levy of a tax in an amount not to exceed twenty-five cents (25c) per head on all assessable cattle in the district on the first day of January and the board of county commissioners shall thereupon be empowered to levy such tax, to be collected as other taxes on personal property, and when collected to be deposited in the county treasury in a special fund to be known as the stockmen's special deputy fund, together with any other funds made available from county, state, federal or private sources for the purposes of this act.

History: En. Sec. 4, Ch. 91, L. 1965; amd. Sec. 6, Ch. 388, L. 1975.

Amendments

The 1975 amendment changed the assessment date from the first Monday of March to the first day of January.

46-2810. Discontinuance of district—levy saved. Upon receipt of a petition or of petitions signed in the same number and in the same manner as the petition to form the district, as herein provided, the board of county commissioners shall discontinue the cattle protective district, provided, however, that such action in discontinuing said district shall not affect any levy made prior to the receipt of such petition or petitions, and the proceeds of any levy made shall be used for the purposes

as in this act set out. No district or portion of such district shall be discontinued so long as there is any outstanding indebtedness against it.

History: En. Sec. 5, Ch. 91, L. 1965;
amd. Sec. 3, Ch. 204, L. 1967.

Amendments

The 1967 amendment substituted "shall" for "may" before "discontinue"; and added the last sentence.

CHAPTER 29—LIVESTOCK DEALERS

- Section 46-2901. Definitions.
 46-2902. Prohibited conduct.
 46-2903. Licenses.
 46-2903.1. Refusal of license.
 46-2903.2. Suspension and revocation of license.
 46-2904. Bonds.
 46-2905. Inspection of records.
 46-2906. Penalties.
 46-2906.1. Injunctive remedy.
 46-2907. Powers and duties of department.

46-2901. Definitions. When used in this chapter:

- (1) "Person" means an individual, partnership, corporation, association, or other form of business enterprise;
- (2) "Livestock" means cattle, sheep, swine, horses, mules, and goats;
- (3) "Livestock dealer" means a person who buys livestock for his own account for purposes of resale or slaughter; or for the account of others; or for or on behalf of any dealer. The term does not include a farmer or rancher who buys or sells livestock in the ordinary course of his farming or ranching operation; and
- (4) "Meat packer" means livestock dealer in this chapter.

History: En. Sec. 1, Ch. 414, L. 1971;
amd. Sec. 182, Ch. 310, L. 1974.

Amendments

The 1974 amendment changed the subdivision designations from small letters to numerals; substituted "this chapter" for "this act" in two places; and made minor changes in phraseology and punctuation.

Title of Act

An act to provide for licensing of livestock dealers and establishing the procedure, rules and regulations therefor.

46-2902. Prohibited conduct. It is unlawful for any person to:

- (1) Carry on the business of a livestock dealer without a valid and effective license issued by the department of livestock under section 46-2903;
- (2) Carry on the business of a livestock dealer without filing and maintaining a valid and effective surety bond under section 46-2904;
- (3) Carry on the business of a livestock dealer while his current liabilities exceed his current assets; or
- (4) Willfully make or cause to be made a false entry or statement of fact in an application, financial statement, or report filed with the department under this chapter.

History: En. Sec. 2, Ch. 414, L. 1971;
amd. Sec. 183, Ch. 310, L. 1974.

Amendments

The 1974 amendment changed the subdivision designations from small letters to numerals; substituted "department of

livestock" for "livestock commission" in subdivision (1); substituted "department under this chapter" for "livestock commission under this act" at the end of subdivision (4); and made minor changes in phraseology and punctuation.

46-2903. Licenses. (1) A person desiring to be licensed as a livestock dealer shall file annually with the department of livestock before July 1, an application for a license to transact business on a form prescribed by the department. The application shall contain the following information:

- (a) The nature of the business to be conducted by the applicant;
- (b) The name or names of persons applying for the license, together with their address and permanent residence;
- (c) The full name of each member, if the applicant is a firm, association, or partnership or the names of the officers if the applicant is a corporation;
- (d) The post office and principal place of business of the applicant;
- (e) If the applicant is a foreign corporation, its principal place of business, outside the state, the name of the state in which it is incorporated, and that it has complied with the laws of this state relating to foreign corporations and its right to do business in this state;
- (f) A copy of the financial statement showing current assets and current liabilities, as submitted to the bonding company to secure a bond under this chapter.

(2) With the filing of an application for license, the applicant shall submit to the department a fee of twenty-five dollars (\$25).

(3) When an applicant has paid the fee, the department, except as otherwise provided in this section, shall issue to the applicant a license which entitles the licensee to engage in the business specified in his application for a period of one (1) year, unless the license is suspended, revoked, or terminated under this chapter.

(4) A license shall be posted in a conspicuous place in or at the place of business of the licensee for inspection by any person. A licensee under this chapter shall be issued a pocket card containing the license number of the applicant and his authority as a livestock dealer and the card shall be carried, maintained, and displayed on demand as authority as a licensed livestock dealer.

(5) All fees provided for under this chapter shall be paid into the state treasury, and shall be placed by the state treasurer to the credit of the department.

(6) A license issued under this chapter automatically terminates on June 30 following the issuance of the license, unless the annual fee has been paid, and a license automatically terminates upon termination of the surety bond covering the licensed operation.

History: En. Sec. 3, Ch. 414, L. 1971; amd. Sec. 184, Ch. 310, L. 1974.

Amendments

The 1974 amendment changed the subsection designations from small letters to numerals; changed the subdivision designations from numerals to small letters in subsection (1); substituted references to "department of livestock" and "department" throughout the section for refer-

ences to "livestock commission"; substituted references to "this chapter" throughout the section for references to "this act"; deleted former subsection (b), enumerating grounds for refusal of a license (see section 46-2903.1); deleted former subsection (c), pertaining to procedure for suspension and revocation of a license (see section 46-2903.2); and made minor changes in phraseology and punctuation.

46-2903.1. Refusal of license. The department shall refuse to issue or renew a license if the applicant:

- (1) Has not filed a surety bond in the form and amount required under section 46-2904;
- (2) Has not satisfactorily demonstrated that his current assets exceed his current liabilities;
- (3) Has been found by the department to have failed to pay, without reasonable cause, obligations incurred in connection with livestock transactions;
- (4) Has violated the livestock laws of this state or of the United States;
- (5) Has practiced fraud in connection with the buying or receiving of animals or the selling, exchanging, or negotiating the sale of livestock or the weighing of livestock;
- (6) Has failed to keep records of all purchases and sales or refused to grant inspection of the records by the department;
- (7) Has been suspended by the order of the secretary of agriculture of the United States department of agriculture under provisions of the Packers and Stockyards Act, 1921, as amended 7 U.S.C. section 181, et seq.; or
- (8) Has failed to comply with an order of the livestock department.

History: En. 46-2903.1 by Sec. 185, Ch. 310, L. 1974.

46-2903.2. Suspension and revocation of license. (1) When the department finds that a livestock dealer has violated subsection (2), (3), or (4) of 46-2902, 46-2903.1, or 46-2905, the department may, by order, suspend the license of the offender for a period not to exceed 1 year. If the violation is repeated, the department may, by order, permanently revoke the license of the offender.

(2) Before a license issued under this chapter may be suspended or revoked, a hearing shall be given the licensee, before the department, to determine whether the license should be suspended or revoked. The licensee shall be given notice of the time and place of the hearing. The hearing shall be held not less than 10 days or more than 30 days after the mailing of the notice. At the hearing, the department shall take and receive evidence, under oath, with respect to the complaint and upon the evidence received shall promptly dismiss the proceedings or revoke or suspend the license. On an adverse ruling, the licensee may appeal to the district court in the county where his principal place or business is located.

History: En. 46-2903.2 by Sec. 186, Ch. 310, L. 1974; amd. Sec. 1, Ch. 17, L. 1977.

maximum time for holding the hearing from 15 to 30 days after the mailing of notice; and made minor changes in phraseology, punctuation and style.

Amendments

The 1977 amendment extended the

46-2904. Bonds. (1) A livestock dealer applying for a license under this chapter shall file with the department and maintain a fully executed

duplicate of a valid and effective bond in the form and amount set forth in this section, or if he is registered and bonded under the Packers and Stockyards Act, 1921 (7 U.S.C. section 181 et seq.), he shall file a statement in the form prescribed by the department which shows he is maintaining a valid and effective bond or its equivalent under the Packers and Stockyards Act.

(2) The amount of the livestock dealer bond filed with the department may not be less than five thousand dollars (\$5,000) or a larger amount as the department may determine. The bond shall contain the following conditions:

"This bond is conditioned on the principal paying when due to the persons entitled thereto the purchase price of all livestock purchased by the principal for his own account or for the accounts of others, and conditioned on the principal safely keeping and properly disbursing all funds, if any, which come into his hands for the purpose of paying for livestock purchased for the accounts of others."

(3) Each livestock dealer bond filed with the department shall contain provisions that a person damaged by failure of the principal to comply with the condition clause of the bond may maintain suit to recover on the bond, and at least thirty (30) days' notice in writing shall be given to the department by the party terminating the bond.

History: En. Sec. 4, Ch. 414, L. 1971; amd. Sec. 187, Ch. 310, L. 1974.

Amendments

The 1974 amendment changed the subsection designations from small letters to

numerals; substituted "this chapter" for "this act" in the first sentence; substituted references to "department" throughout the section for references to "livestock commission"; and made minor changes in phraseology and punctuation.

46-2905. Inspection of records. A livestock dealer shall keep and maintain records suitable to disclose all purchases and sales of livestock. A livestock dealer shall, during all reasonable times, give the department access to and let the department copy all of the records relating to his business.

History: En. Sec. 5, Ch. 414, L. 1971; amd. Sec. 188, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "give the department access to and let the de-

partment copy all of the records relating to his business" for "submit any authorized agent of the livestock commission to have access to and to copy any and all of such records relating to his business."

46-2906. Penalties. A livestock dealer who violates subsection (1) or (4) of section 46-2902, is guilty of a misdemeanor.

History: En. Sec. 6, Ch. 414, L. 1971; amd. Sec. 189, Ch. 310, L. 1974.

Amendments

The 1974 amendment rewrote this section which read: "Any livestock dealer who violates the provisions of section (a)

or (d) of section 2 of this act, shall be guilty of a misdemeanor and shall on conviction thereof be subject to imprisonment for not more than six (6) months, or a fine of not more than five hundred dollars (\$500) or both such imprisonment and fine."

46-2906.1. Injunctive remedy. The buying of livestock by a person not licensed and bonded as required by this chapter may be enjoined by the district court on petition from the department. Upon a showing that

a person is engaging in the business of a livestock dealer as defined in 46-2901 without the license and bond required by this chapter, the court shall enjoin the person from further activities as a livestock dealer until the license and bond have been properly obtained. It is not necessary to show that any individual has been injured by the actions complained of in order to issue the injunction. The injunction provided by this section is an additional remedy to the criminal penalties provided in 46-2906.

History: En. 46-2906.1 by Sec. 2, Ch. 190, L. 1977.

46-2907. Powers and duties of department. The department shall enforce this chapter, and adopt rules necessary or desirable to carry out this chapter.

History: En. Sec. 7, Ch. 414, L. 1971; amd. Sec. 190, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "livestock commission" in the caption and the text of the section; substituted "this chapter" for "this act" in two places; and made minor changes in phraseology.

46-2908. Repealed.

Repeal

Section 46-2908 (Sec. 9, Ch. 414, L. 1971), relating to the citation of the "Live-

stock Dealer Licensing Act," was repealed by Sec. 201, Ch. 310, Laws of 1974.

CHAPTER 30—UNLAWFUL DRIVING OF LIVESTOCK

Section 46-3001. Dogging livestock.

46-3002 to 46-3005. [Transferred from Title 94.]

46-3006. Stolen livestock—seizure and confiscating of vehicle used to transport—payment of prior liens and disposal of proceeds.

46-3007. Stolen livestock—seizure and confiscating of vehicle used to transport—service of process.

46-3008. [Transferred from Title 94.]

46-3001. (11552) Dogging livestock. Any person who permits or directs any dog owned by him or in his possession to chase or run any cattle or other livestock of which he is not the owner or the person in charge upon the open range or government lands or away from any watering place upon the open range is guilty of a misdemeanor and punishable by a fine of not more than \$50.

History: En. Sec. 1, Ch. 110, L. 1903; re-en. Sec. 8861, Rev. C. 1907; re-en. Sec. 11552, R. C. M. 1921; Sec. 94-3567, R. C. M. 1947; redes. 46-3001 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 56, Ch. 12, L. 1977.

Amendments

The 1977 amendment deleted "or in the possession of any employer" after "possession"; and made minor changes in phraseology, punctuation and style.

46-3002 to 46-3005. [Transferred from Title 94.]

Compiler's Notes

These sections were originally numbered 94-3568, 94-3569, 94-35-200, and 94-35-204. Section 29, Ch. 513, Laws of 1973, renumbered them to appear in this title. Because there has been no change in text, the sections are not reprinted here

but may be found in bound Volume Eight as follows:

New Sec.	Vol. 8
46-3002	94-3568
46-3003	94-3569
46-3004	94-35-200
46-3005	94-35-204

46-3006. Stolen livestock—seizure and confiscating of vehicle used to transport—payment of prior liens and disposal of proceeds. The officer making the sale, after deducting the expenses of keeping the property and the cost of the sale, so far as the balance of sale proceeds permit, shall pay all liens, according to their priorities, which are established, by intervention or otherwise in the proceedings, as being bona fide and as having been created without the lienor having any notice or reasonable cause to believe that the vehicle was being or was to be used for the illegal transportation, and shall pay the balance of the proceeds to the treasurer of this state to be credited to the department of livestock fund.

History: En. Sec. 2, Ch. 80, L. 1931; Sec. 94-35-205, R. C. M. 1947; redes. 46-3006 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 200, Ch. 310, L. 1974.

Amendments

The 1974 amendment substituted "department of livestock fund" for "livestock commission fund" at the end of the

section and made minor changes in phraseology.

Repealing Clause

Section 201 of Ch. 310, Laws 1974 read "Sections 3-24-133, 27-106, 46-101 through 46-103, 46-107, 46-201, 46-205, 46-401 through 46-415, 46-610, 46-805, 46-807, 46-1702, 46-2908, 82-2301, 82A-1302, 82A-1304, 82A-1305 are repealed."

46-3007. (11552.3) Stolen livestock—seizure and confiscating of vehicle used to transport—service of process. Service of process in a proceeding for confiscation of such vehicle shall conform as far as practicable with the provisions of the Montana rules of civil procedure, provided that insofar as the proceeding against the vehicle is concerned no copy of the summons or complaint need be mailed and the service shall be complete upon publication.

History: En. Sec. 3, Ch. 80, L. 1931; Sec. 94-35-206, R. C. M. 1947; redes. 46-3007 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 57, Ch. 12, L. 1977.

Amendments

The 1977 amendment substituted "the

Montana rules of civil procedure" for "sections 93-3007 to 93-3015, both inclusive"; deleted "and no showing need be made under the provisions of said section 93-3013" after "mailed" near the end of the section; and made minor changes in phraseology and style.

46-3008. [Transferred from Title 94.]

Compiler's Notes

This section was originally numbered 94-35-207. Section 29, Ch. 513, Laws of 1973, renumbered it to appear in this title.

Because there has been no change in text, the section is not reprinted here but may be found in bound Volume Eight as Sec. 94-35-207.

CHAPTER 31—PORK RESEARCH AND MARKETING ACT

- Section 46-3101. Short title.
 46-3102. Definitions.
 46-3103. Compensation—per diem.
 46-3104. Removal from office—cause—procedure.
 46-3105. Election of chairman—time of meetings.
 46-3106. Powers of committee.
 46-3107. Assessments.
 46-3108. Purchasers delivery of invoice to producers—form—filing of sworn statement—payment of assessment.
 46-3109. Receipt of gifts, grants or donations for research purposes.
 46-3110. Research and marketing account—sources—use—expenditures.
 46-3111. Contracts for carrying out research, promotion, and marketing of swine.

46-3112. Violation of act—penalty.

46-3113. Duration of act—expiration—reversion of remaining funds.

46-3101. Short title. This act may be cited as the “Montana Pork Research and Marketing Act.”

History: En. 46-3101 by Sec. 1, Ch. 484, L. 1975. and marketing committee to promote effective research into the production and marketing of swine; and providing for a

Title of Act

An act providing for a pork research swine sold in Montana.

46-3102. Definitions. As used in this act, unless the context otherwise requires:

(1) “Committee” means the Montana pork research and marketing committee provided for in section 82A-1306.

(2) “Producer” means anyone actively engaged in the production of swine and includes a person, partnership, association, corporation, cooperative, trust and any and all business units, devices, and arrangements.

(3) “Purchaser” means any licensed or bonded livestock dealer or livestock market in the state of Montana.

History: En. 46-3102 by Sec. 2, Ch. 484, L. 1975.

46-3103. Compensation—per diem. Members of the committee shall receive no salary but shall be paid, from the committee account, a per diem of twenty dollars (\$20) for each day they are actually and necessarily engaged in the transaction of official business under this act.

History: En. 46-3103 by Sec. 4, Ch. 484, L. 1975.

46-3104. Removal from office—cause—procedure. Any member of the committee shall be removable by the governor for malfeasance, misfeasance or neglect of duty. Any member of the committee:

- (1) ceasing to be a resident of the state of Montana,
- (2) ceasing to live in the district from which he was appointed, or
- (3) ceasing to be actually engaged in producing swine in said state or district, shall automatically be disqualified from continuing as a member.

History: En. 46-3104 by Sec. 5, Ch. 484, L. 1975.

46-3105. Election of chairman—time of meetings. At the first meeting of the committee, it shall elect a chairman from among its members. The committee shall meet at least once every six (6) months and at such other times as called by the chairman or by any two (2) members of committee.

History: En. 46-3105 by Sec. 6, Ch. 484, L. 1975.

46-3106. Powers of committee. The committee shall have the power to:

- (1) Adopt rules necessary for the administration of this act;
- (2) Provide, through the department, for the enforcement of this act;
- (3) Conduct adequate, intensive and timely research into the promotion, marketing, production and uses of pork in all phases and relationships.

(4) Enter into written contracts or agreements with recognized agencies, public or private, within or without the state of Montana, for the purpose of, but not limited to, improving pork quality, increasing the efficiency of production, developing marketing knowledge, developing markets and promoting pork and pork products. None of the duties, authorities and powers set forth in this act and delegated to the committee shall be construed to mean or permit participation in state or federal political action.

History: En. 46-3106 by Sec. 7, Ch. 484, L. 1975.

46-3107. Assessments. There is hereby assessed a per head levy of ten cents (10c) on all swine sold by producers to purchasers beginning July 1, 1975. The assessment shall be deducted and collected at the time of sale from the producers receipt of sale and remitted to department of livestock by purchaser under the provisions of this act.

History: En. 46-3107 by Sec. 8, Ch. 484, L. 1975.

46-3108. Purchasers delivery of invoice to producers—form—filing of sworn statement—payment of assessment. (1) The purchaser of swine at the time of settlement, shall make and deliver invoices for each purchase to the producer. Such invoices shall show

- (a) the name and address of the producer and purchaser
- (b) the number of swine sold
- (c) the date of the purchase and the amount of assessment collected and remitted to the department of livestock.

(2) The purchaser shall deliver to and have on file with the department of livestock on forms prescribed by the committee by the twentieth (20th) day of each calendar month following any calendar month in which purchaser shall purchase swine of a producer, beginning on August 20, 1975, a sworn statement of the number of swine purchased in Montana during the preceding calendar month. At the time the sworn statement is filed, the purchaser shall pay and remit to the department of livestock the assessment provided for in this act for deposit in the swine research and marketing account.

(3) The statement referred to in subsections (1) and (2) of this section, shall be legibly written and shall be entirely free of any corrections or erasures on the face thereof. Any person who shall alter any part of any statement shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished as is provided herein.

(4) Any time after thirty (30) days from the deduction of the assessment and before the expiration of ninety (90) days following such deduc-

tion by the purchaser, the producer may, upon the submission of a written, verified request therefor to the committee through the department of livestock obtain a refund in the amount of the assessment deducted by said purchaser. The request shall be accompanied by the original invoices received by the producer at the time of settlement. The pork research and marketing committee shall keep complete records of all refunds made under the provisions of this act. All original invoices shall be returned to the producer with the refund payments.

History: En. 46-3108 by Sec. 9, Ch. 484, L. 1975.

46-3109. Receipt of gifts, grants or donations for research purposes. The department of livestock is hereby authorized to receive any gifts, grants, or donations for any research of scientific inquiries conducted under authority of this act, and to use and expend the same in compliance with the conditions, if any, of such grants, gifts and donations, provided such conditions are valid under the laws of the state of Montana, and in aid of the purposes of this act.

History: En. 46-3109 by Sec. 10, Ch. 484, L. 1975.

46-3110. Research and marketing account—sources—use—expenditures. (1) The proceeds of all assessments made, paid and collected under this act, and the proceeds from all gifts, grants or donations to the department of livestock for research authorized by this act shall be deposited in the federal and private revenue fund for the use of the committee as provided in this act.

(2) The account shall be maintained for the purposes of this act and shall be separate and apart from all other accounts of the department.

(3) Ten per cent (10%) of all unrefunded assessments shall be paid to the national meat board; and

(4) Ten per cent (10%) of all unrefunded assessments shall be paid to the national pork producer council.

(5) The committee may be assessed costs by the department only for those services requested by the committee.

History: En. 46-3110 by Sec. 11, Ch. 484, L. 1975.

46-3111. Contracts for carrying out research, promotion, and marketing of swine. The Montana pork research and marketing committee shall not set up research units or agencies of its own, but shall co-operate and is hereby empowered to enter into contracts with other lawful and proper local, state or national organizations, public or private, in carrying out all phases of research and marketing contemplated by this act.

History: En. 46-3111 by Sec. 12, Ch. 484, L. 1975.

46-3112. Violation of act—penalty. Any person violating any of the provisions of this act shall be guilty of a misdemeanor, and shall, upon

conviction, be fined not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500).

History: En. 46-3112 by Sec. 13, Ch. 484, L. 1975.

46-3113. Duration of act—expiration—reversion of remaining funds. This act shall be in full force and effect from July 1, 1975 for a period of seven (7) years. If this act is not renewed through legislative action to extend beyond seven (7) years, any money remaining that has been collected under this act shall revert to Montana state university to be used exclusively for swine research.

History: En. 46-3113 by Sec. 14, Ch. 484, L. 1975.

TITLE 47—LOANS

- Chapter 1. Loans for use or exchange—loan of money, 47-124, 47-125.
2. Consumer Loan Act, 47-202 to 47-207, 47-209 to 41-211, 47-214 to 47-216, 47-218, 47-220, 47-223, 47-226.

CHAPTER 1—LOANS FOR USE OR EXCHANGE—LOAN OF MONEY

- Section 47-124. Legal interest.
47-125. Same rate allowed by agreement

47-101. (7702) Loan defined.

Cross-References

Retail installment sales, secs. 74-601 et seq.

47-122. (7723) Interest defined.

Retail Installment Finance Charges

Finance charges under the Retail Installment Sales Act are not compensation for the forbearance of money within the definition of interest in this section. *Cecil v. Allied Stores Corp.*, — M —, 513 P 2d 704.

Retail Installment Sales Act

The finance charges provided for in the Retail Installment Sales Act are not compensation for the forbearance of money within the statutory definition of interest in this section since, at the time of pur-

chase, the debt created is a time obligation and is not then due because of the express provisions of the revolving charge account agreement which allows the customer to pay for the purchases in installments over a period of time; the "time price" doctrine applies to revolving charge account sales even though they are governed by the terms of one price agreement covering all future purchases from time to time rather than a series of identical individual agreements entered into at the time of each individual sale. *Cecil v. Allied Stores Corp.*, — M —, 513 P 2d 704.

47-124. (7725) Legal interest. (1) Except as otherwise provided by the Uniform Commercial Code, unless there is an express contract in writing fixing a different rate or a law or ordinance or resolution of a public body fixing a different rate on its obligations, interest is payable on all moneys at the rate of 6% a year after they become due on:

- (a) any instrument of writing, except a judgment;
- (b) an account stated;
- (c) moneys lent or due on any settlement of accounts from the date on which the balance is ascertained; and
- (d) moneys received for the use of another and detained from him.

(2) In the computation of interest for a period of less than 1 year, 365 days constitute a year.

History: En. Sec. 2585, Civ. C. 1895; amd. Sec. 1, p. 125, L. 1899; re-en. Sec. 5211, Rev. C. 1907; re-en. Sec. 7725, R. C. M. 1921; amd. Sec. 1, Ch. 144, L. 1933; amd. Sec. 11-130, Ch. 264, L. 1963; amd. Sec. 38, Ch. 234, L. 1971; amd. Sec. 11, Ch. 185, L. 1977. Cal. Civ. C. Sec. 1917.

Amendments

The 1963 amendment inserted "Except as otherwise provided by the Uniform Commercial Code" at the beginning of the section.

The 1971 amendment inserted "or a law or ordinance or resolution of a public body fixing a different rate on its obliga-

tions" after "fixing a different rate" near the beginning of the section.

The 1977 amendment inserted the sub-

section and subdivision designations; and made minor changes in style, punctuation and phraseology.

47-125. (7726) Same rate allowed by agreement. On amounts up to one hundred fifty thousand dollars (\$150,000) parties may agree in writing for the payment of any rate of interest not more than ten per cent (10%) per annum or more than four (4) percentage points in excess of the discount rate on ninety-day commercial paper in effect at the federal reserve bank in the ninth federal reserve district, whichever is greater, and such interest shall be allowed, according to the terms of the agreement, until the entry of judgment. On amounts exceeding one hundred fifty thousand dollars (\$150,000) and up to three hundred thousand dollars (\$300,000) parties may agree in writing for the payment of any rate of interest not more than ten per cent (10%) per annum or more than five (5) percentage points in excess of the discount rate on ninety-day commercial paper in effect at the federal reserve bank in the ninth federal reserve district, whichever is greater, and such interest shall be allowed, according to the terms of the agreement, until the entry of judgment. On amounts exceeding three hundred thousand dollars (\$300,000) parties may agree in writing to the payment of any rate of interest, without limitation, and such interest shall be allowed, according to the terms of the agreement, until the entry of judgment.

History: En. Sec. 2586, Civ. C. 1895; re-en. Sec. 5212, Rev. C. 1907; amd. Sec. 1, Ch. 36, L. 1913; amd. Sec. 1, Ch. 62, L. 1919; re-en. Sec. 7726, R. C. M. 1921; amd. Sec. 1, Ch. 503, L. 1975. Cal. Civ. C. Sec. 1918.

Amendments

The 1975 amendment inserted "On amounts up to one hundred fifty thousand dollars (\$150,000)" at the beginning of the section; inserted "or more than four (4) percentage points in excess of the discount rate on ninety-day commercial paper in effect at the federal reserve bank in the ninth federal reserve district, whichever is greater" in the first sentence; and added the last two sentences.

Effective Date

Section 2 of Ch. 503, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved April 29, 1975.

Add-on Interest

Promissory note, payable in installments, bearing 6.5% add-on interest (i.e., real interest rate of 11.75%) was not illegal under the provisions of section 5-527; however, when bank, after default of borrower, changed to a straight 11.75% annual interest rate, the note became usurious. *Montana Nat. Bank of Boze-*

man v. Kolokotronis, — M —, 535 P 2d 1017.

Retail Installment Sales Contracts

In a diversity action to recover the balance due on a note and conditional sales contract executed and delivered by defendants to a North Dakota corporation and assigned by it to plaintiff, where defendants contended that the rate of interest charged them pursuant to the Montana Retail Installment Sales Act, section 74-608 was 16.3%, which exceeded the maximum rate of 10% permitted by this section and constituted a special law regulating the rate of interest on money, proscribed by section 26, article V of the constitution, the federal court applied the abstention doctrine and postponed further action until the issue was determined by the supreme court of Montana. *B-W Acceptance Corp. v. Torgerson*, 234 F Supp 214, 216.

Sale of Assets

Where plaintiffs advanced the money and purchased the assets of a business, and at the same time entered an agreement for future resale of a part of the business to defendant, the entire transaction was a sale and contract of sale, rather than a loan, so that the difference in sale prices was not interest subject to the usury statute. *Favero v. Wynacht*, 140 M 358, 371 P 2d 858, 867.

47-126. (7727) Penalty for usury—action to recover, etc.**Demand for Double Penalty**

Where bank had brought suit for enforcement of usurious note, defendants properly responded with counterclaim for double penalty payment, although no prior written demand had been made upon plaintiff. *Montana Nat. Bank of Bozeman v. Kolokotronis*, — M —, 535 P 2d 1017.

Intent

Letter demanding payment and including a schedule of principal and interest payments was sufficient to establish the intent of bank to take more than the legal amount of interest. *Montana Nat. Bank*

of *Bozeman v. Kolokotronis*, — M —, 535 P 2d 1017.

Penalty

Computation of penalty for usury does not rest on the difference between the amount of interest charged and the maximum amount that could have legally been charged, but is simply twice the amount of interest appearing on the face of the note. *Montana Nat. Bank of Bozeman v. Kolokotronis*, — M —, 535 P 2d 1017.

References

Favero v. Wynacht, 140 M 358, 371 P 2d 858, 867.

CHAPTER 2—CONSUMER LOAN ACT

- Section 47-202. Definitions.**
47-203. Department—powers and duties—adoption of rules.
47-204. Scope—exemptions—invalidity of contracts in violation.
47-205. When loans in excess of \$1,000 by licensee prohibited—supplementary license to make loans up to \$7,500.
47-206. License, when required—display—nontransferable—removal—license year, fees—use.
47-207. Issuance or denial of license, when—mailing of denial order and findings.
47-209. License renewal fee.
47-210. Rates and charges—refunds—past due amounts—excess charges, effect.
47-211. Installment payment—contract period.
47-214. Insurance written with loans—types and limitation thereon—delivery of insurance policy.
47-215. Investigations, when—who may be investigated.
47-216. Annual examinations—cost of examinations—limitations.
47-218. Annual report—contents—verified—publication.
47-220. Wage assignments—limitations.
47-223. Revocation and suspension of license, when.
47-226. Access to records—witnesses.

47-201. Act, how cited.**Cross-References**

Retail installment sales, secs. 74-601 et seq.

47-202. Definitions. Unless the context requires otherwise, in this act:

- (1) "Person" means individuals, partnerships, associations, corporations, and all legal entities in the loaning business.
- (2) "License" means one or both of the licenses provided for by this act.
- (3) "Licensee" means the person holding a license.
- (4) "Department" means the department of business regulation provided for in Title 82A, chapter 4.
- (5) "Consumer type loan business" means the business of making loans of seven thousand five hundred dollars (\$7,500) or less generally repayable in substantially equal installments.

History: En. Sec. 2, Ch. 283, L. 1959; amd. Sec. 1, Ch. 233, L. 1971; amd. Sec. 1, Ch. 172, L. 1975; amd. Sec. 110, Ch. 431, L. 1975.

Compiler's Notes

This section was amended twice in 1975, once by Ch. 172 and once by Ch. 431. Neither amendatory act mentioned or included the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1971 amendment substituted "one

or both of the licenses" for "the license" in subdivision (b); and increased the maximum loan specified in subdivision (e) from \$1,000 to \$2,500.

Chapter 172, Laws of 1975, increased the loan amount limit in subdivision (5) from \$2,500 to \$7,500.

Chapter 431, Laws of 1975, substituted the definition of "Department" for a definition of "Commissioner"; redesignated the subdivisions as (1) through (5); and made minor changes in phraseology, punctuation and style. For prior version, see parent volume and 1971 amendment note.

47-203. Department—powers and duties—adoption of rules. (1) All powers and duties of regulation and supervision conferred by this act are vested in the department. The department shall adopt rules necessary to carry out the intent and purposes of this act. A copy of every rule shall be mailed to each licensee at least fifteen (15) days in advance of its effective date. However, the failure of a licensee to receive a copy of a rule does not exempt him from complying with a rule adopted under this act.

(2) All rules adopted under this act are binding on all licensees and enforceable by the department through the power of suspension or revocation of licenses.

History: En. Sec. 3, Ch. 283, L. 1959; amd. Sec. 111, Ch. 431, L. 1975.

Amendments

The 1975 amendment deleted former subsection (a) which created the office of consumer loan commissioner; redesignated subsections (b) and (c) as (1) and (2); substituted "department" for "commissioner" throughout the section;

deleted a former third sentence in subsection (1) which required rules and regulations to be filed in the commissioner's office and be open to the public; deleted "postage pre-paid" after "mailed to each licensee" in the third sentence of subsection (1); and made numerous changes in style and phraseology. For prior version, see parent volume.

47-204. Scope—exemptions—invalidity of contracts in violation. (a) Scope; prohibiting engaging in the business of making loans of seven thousand five hundred dollars (\$7,500) or less, except after having obtained a license; exemptions. On or after July 1, 1959, no person shall engage in the business of making loans or advances of money on credit in amounts of seven thousand five hundred dollars (\$7,500) or less and contract for, charge, or receive directly or indirectly on or in connection with any such loan or advance, any charges whether for interest, compensation, consideration, or expense which in the aggregate are greater than ten per cent (10%) per annum, except as provided in and authorized by this act. A person doing business under the authority of this state or the United States relating to banks, trust companies, savings or building and loan associations, credit unions, Morris Plan companies, or a person engaged in business as a licensed pawnbroker, or any person who shall extend credit in connection with the sale of a commodity shall not become a licensee under this act, nor shall any of the provisions of this act apply to any such exempted person.

(b) and (c) * * * [Same as parent volume.]

History: En. Sec. 4, Ch. 283, L. 1959; amd. Sec. 2, Ch. 233, L. 1971; amd. Sec. 2, Ch. 172, L. 1975.

Amendments

The 1971 amendment increased the maximum loan specified in subsection (a) from \$1,000 to \$2,500; deleted "relating

to licensees" after "provisions of this act" near the end of subsection (a); and deleted "who is not licensed hereunder" from the end of subsection (a).

The 1975 amendment increased the maximum loan specified in subsection (a) from \$2,500 to \$7,500.

47-205. When loans in excess of \$1,000 by licensee prohibited— supplementary license to make loans up to \$7,500. No licensee under the provisions of this act shall lend money in a total sum greater than one thousand dollars (\$1,000) to any borrower or to any borrower and spouse except under the following circumstances and for the following charges: When any person holding a license provided for in section 47-206 desires to make loans for any amount in excess of one thousand dollars (\$1,000) but not exceeding seven thousand five hundred dollars (\$7,500) the holder of such license provided for in section 47-206 may apply to the department for a supplementary license and pay therefor an additional license fee of seventy-five dollars (\$75) per calendar year or one-half ($\frac{1}{2}$) of said sum for any period less than six (6) months. The department shall grant, on application, a supplementary license to a holder of a license provided for in section 47-206. Section 47-209 shall be applicable as to time of payment of supplementary license fee and penalty for failure to pay the same. The holder of a supplementary license may contract for and receive charges at rates authorized for licensees in section 47-210 for the first one thousand dollars (\$1,000) of the principal amount of any loan and may contract for and receive charges at rates not in excess of ten dollars (\$10) per year per one hundred dollars (\$100) on that part of the principal amount of any loan exceeding one thousand dollars (\$1,000) but not exceeding seven thousand five hundred dollars (\$7,500). Said charges shall be computed at the applicable rates on the full, original principal amount of the loan from the date of the loan to the due date of the final scheduled installment irrespective of the fact that the loan is payable in installments. Said charges shall be added to the principal of the loan and shall not be discounted or deducted therefrom nor paid or received at the time the loan is made. For the purpose of computing charges for a fraction of a month, a day shall be considered one-thirtieth ($\frac{1}{30}$) of a month. Provisions of section 47-210 relating to refunds, fees and charges and the other provisions of this act not inconsistent with this section shall be applicable to loans made under authority of a supplementary license.

History: En. Sec. 5, Ch. 283, L. 1959; amd. Sec. 3, Ch. 233, L. 1971; amd. Sec. 3, Ch. 172, L. 1975; amd. Sec. 172, Ch. 431, L. 1975.

Compiler's Notes

This section was amended twice in 1975, once by Ch. 172 and once by Ch. 431. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1971 amendment added "or to any borrower and spouse except under the following circumstances and for the following charges" at the end of the first sentence, and added everything after the first sentence.

Chapter 172, Laws of 1975, increased the maximum limit for loans under a supplementary license from \$2,500 to \$7,500.

Chapter 431, Laws of 1975, substituted "department" for "commissioner" in two places.

47-206. License, when required—display—nontransferable—removal—license year, fees—use. (1) A place of business operated under this act shall properly display on the premises a nontransferable and nonassignable license. The same person may obtain additional licenses upon compliance with this act as to each license. Application for a license shall be on a form prescribed and furnished by the department. A licensee may move his place of business from one place to another within a county without obtaining a new license, provided he obtains written permission from the department.

(2) With each application the applicant shall submit fifty dollars (\$50) as an investigation fee and one hundred twenty-five dollars (\$125) as a license fee. The license fee shall be returned to the applicant if the application is denied. The license year is the calendar year and the license fee for any period less than six (6) months is sixty-two dollars fifty cents (\$62.50). A license remains in force until surrendered, suspended, or revoked.

(3) All moneys collected under the authority of this act shall be paid into the state treasury by the department.

History: En. Sec. 6, Ch. 283, L. 1959; amd. Sec. 112, Ch. 431, L. 1975.

"On and after July 1, 1959" at the beginning of subsection (1); substituted "department" for "commissioner" throughout the section; and made numerous changes in style, punctuation, and phraseology.

Amendments

The 1975 amendment redesignated subsections (a) to (c) as (1) to (3); deleted

47-207. Issuance or denial of license, when—mailing of denial order and findings. (1) Within thirty (30) days after an application for license is filed with the department, together with the required fees, the department shall issue the license if the character and general fitness of the applicant is such as to warrant belief that the business will be operated lawfully and fairly within the provisions of this act, or enter an order denying the license, if it finds to the contrary.

(2) A copy of the order granting or denying a license, together with a summary of the department's findings, shall be filed in the office of the department and shall be public record. A copy of the order denying a license, together with a summary of the department's findings, shall be mailed postage prepaid, to the applicant at the address stated in the application.

History: En. Sec. 7, Ch. 283, L. 1959; amd. Sec. 113, Ch. 431, L. 1975.

throughout the section; deleted from the end of subsection (1) a provision for licensing loan businesses in existence on December 31, 1958; and made numerous changes in phraseology, punctuation and style. For prior version, see parent volume.

Amendments

The 1975 amendment redesignated subsections (a) and (b) as (1) and (2); substituted "department" for "commissioner"

47-208. Conduct of other business in same office.

Compiler's Notes

Section 172, Ch. 431, Laws 1975, substi-

tuted "department" in this section for "commissioner."

47-209. License renewal fee. Every licensee shall, on or before December 1, pay to the department the sum of \$125 for each license held as

a license fee for the succeeding calendar year. Failure to pay such license fee within the time prescribed shall automatically revoke such license.

History: En. Sec. 9, Ch. 283, L. 1959; amd. Sec. 172, Ch. 431, L. 1975; amd. Sec. 35, Ch. 71, L. 1977.

The 1977 amendment substituted "license fee" for "licensee fee" near the end of the first sentence; and made minor changes in phraseology and style.

Amendments

The 1975 amendment substituted "department" for "commissioner."

47-210. Rates and charges — refunds — past due amounts — excess charges, effect. (a) Maximum rate of charge. Every licensee hereunder may contract for and receive, on any loan of money not exceeding one thousand dollars (\$1,000) in principal amount, charges at rates not in excess of twenty dollars (\$20) per year per one hundred dollars (\$100) on that part of the principal amount of the loan not exceeding three hundred dollars (\$300); sixteen dollars (\$16) per year per one hundred dollars (\$100) on that part of the principal amount of the loan exceeding three hundred dollars (\$300) but not exceeding five hundred dollars (\$500), and twelve dollars (\$12) per year per one hundred dollars (\$100) on that part of the principal amount of the loan in excess of five hundred dollars (\$500) but not exceeding one thousand dollars (\$1,000). Said charges shall be computed at the aforesaid rates on the full, original principal amount of the loan from the date of the loan to the due date of the final scheduled installment irrespective of the fact that the loan is payable in installments. Said charges shall be added to the principal of the loan and shall not be discounted or deducted therefrom nor paid or received at the time the loan is made. For the purpose of computing charges for a fraction of a month, a day shall be considered one-thirtieth of a month.

(b) to (f). * * * [Same as parent volume.]

History: En. Sec. 10, Ch. 283, L. 1959; amd. Sec. 1, Ch. 15, L. 1965.

Amendment

The 1965 amendment substituted "principal amount" for "amount" near the beginning of subsection (a); inserted "of the principal amount" before "of the loan" in three places in the first sentence of subsection (a); deleted from the end of the first sentence of subsection (a) the words "when the loan is made for a period of

one year, and proportionately at these rates for a greater or lesser amount within said limits or for a greater or lesser period of time"; inserted the second sentence in subsection (a); and made minor changes in phraseology in subsection (a).

Cross-References

Applicability of finance charge limitation imposed by retail installment sales act, secs. 74-602, 74-608.

47-211. Installment payment—contract period. (1) No licensee may enter into any contract of loan:

(a) of \$300 or less, exclusive of charges, under which the borrower agrees to make any scheduled repayment of principal more than 21 calendar months from the date of making such contract;

(b) for more than \$300 to and including \$1,000, exclusive of charges, under which the borrower agrees to make any scheduled repayment of principal more than 25 calendar months from the date of making;

(c) for more than \$1,000 to and including \$2,000, exclusive of charges,

under which the borrower agrees to make any scheduled repayment of principal more than 37 calendar months from the date of making; or

(d) for more than \$2,000, to and including \$2,500, exclusive of charges, under which the borrower agrees to make any scheduled repayment of principal more than 37 calendar months from the date of making.

(2) Every loan contract shall require payment of principal and charges in installments which shall be payable at approximately equal periodic intervals, except that payment dates may be omitted to accommodate borrowers with seasonal incomes. No installment contracted for may be substantially larger than any preceding installment. When a loan contract provides for monthly installments, the first installment may be payable at any time within 45 days of the date of the loan and the charges for the number of days in excess of 30 from the date of making may be added to the scheduled amount of the installments.

History: En. Sec. 11, Ch. 283, L. 1959; amd. Sec. 4, Ch. 233, L. 1971; amd. Sec. 36, Ch. 71, L. 1977.

in the first sentence, and added to the first sentence the provisions relating to loans of more than \$1,000.

Amendments

The 1971 amendment inserted "to and including one thousand dollars (\$1,000)"

The 1977 amendment inserted the subsection and subdivision designations; and made minor changes in phraseology, punctuation and style.

47-212. Copy of contract or statement of contents, etc.

Compiler's Notes

Section 172, Ch. 431, Laws 1975, substi-

tuted "department" in this section for "commissioner."

47-214. Insurance written with loans—types and limitation thereon—delivery of insurance policy. (a) No insurance of any kind shall be written by a licensee, or employee, affiliate or associate of the licensee in connection with any loan except as hereinafter provided.

(b) Insurance permitted under the provisions of this section shall be obtained through an insurance company authorized to conduct such business in Montana by a duly licensed agent or agency of this state. Premiums shall not exceed those fixed by law or current applicable manual rates. Insurance written, as authorized by this section, may contain a mortgagee clause or other appropriate provisions to protect the insurable interest of the licensee.

(c) Property insurance. When the principal amount of the loan exceeds three hundred dollars (\$300) exclusive of the portion thereof attributable to insurance premiums and charges, the licensee may require a borrower to insure property offered as security against any substantial risk of loss, damage or destruction for an amount not to exceed the reasonable value of the property insured or the amount of the loan, whichever is smaller, and for the customary term approximating the term of the loan contract. It shall be optional with the borrower to obtain such insurance in an amount greater than the amount of the loan or for a longer term.

(d) Credit life insurance and credit disability insurance. Subject to the laws of this state, credit life insurance and credit disability insurance may be provided at the expense of the borrower and may be provided by

a licensee upon the request of the borrower when the principal amount of the loan exceeds three hundred dollars (\$300) exclusive of the portion thereof attributable to insurance premiums and charges. If any loan shall include amounts advanced for insurance premiums and charges such loan shall not in any event exceed seven thousand five hundred dollars (\$7,500).

(e) The insurance authorized by this section may be sold, obtained or provided by or through a licensee and the premium or identifiable charge for the insurance may be included in the principal amount of the loan; provided, however, that no licensee shall require a borrower to purchase such insurance from such licensee or from any particular agent, broker or insurance company as a condition precedent for the obtaining of a loan. Any gain or advantage to the licensee or any employee, affiliate or associate of the licensee from the sale, provision or obtaining of insurance as authorized by this section shall not be deemed to be additional charges or a violation of this act.

A licensee shall not require insurance under this section until any existing insurance of the same type has expired or has been canceled and the unearned portion of the premium for the canceled insurance has been rebated to the borrower.

History: En. Sec. 14, Ch. 283, L. 1959; amd. Sec. 2, Ch. 15, L. 1965; amd. Sec. 5, Ch. 233, L. 1971; amd. Sec. 4, Ch. 172, L. 1975.

Amendments

The 1965 amendment substituted "except as hereinafter provided" at the end of subsection (a) for "where the principal amount thereof is three hundred dollars (\$300) or less, and such amount of three hundred dollars (\$300) shall not include any charge for interest, insurance or any other identifiable charge"; inserted subsection (d) and the first paragraph of subsection (e); and substituted "this section" for "this subsection" near the beginning of the second paragraph of subsection (e), formerly the second paragraph of subsection (c).

The 1971 amendment substituted "property" for "tangible personal property" after "may require a borrower to insure" in the first sentence of subsection (c); inserted "and credit disability insurance" in subsection (d); substituted "two thousand five hundred dollars (\$2,500)" for "one thousand dollars (\$1,000)" at the end of subsection (d); and made minor changes in phraseology.

The 1975 amendment increased the maximum loan limit from \$2,500 to \$7,500 in subsection (d).

Effective Date

Section 3 of Ch. 15, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 12, 1965.

47-215. Investigations, when—who may be investigated. The department may at any time investigate any transaction with borrowers and may examine the books, accounts, and records in this state to discover violations of this act by (1) a licensee, (2) a person who advertises for, solicits, or holds himself out as willing to make loans in amounts of seven thousand five hundred dollars (\$7,500) or less, or (3) a person whom the department has reason to believe is violating or is about to violate this act.

History: En. Sec. 15, Ch. 283, L. 1959; amd. Sec. 6, Ch. 233, L. 1971; amd. Sec. 5, Ch. 172, L. 1975; amd. Sec. 114, Ch. 431, L. 1975.

Compiler's Notes

This section was amended twice in

1975, once by Ch. 172 and once by Ch. 431. Neither amendatory act mentioned or included the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1971 amendment increased the limit specified in clause (2) from \$1,000 to \$2,500, and made a minor change in punctuation.

Chapter 172, Laws of 1975, increased the loan amount from \$2,500 to \$7,500.

Chapter 431, Laws of 1975, substituted "department" for references to the commissioner; and made minor changes in phraseology, punctuation and style.

47-216. Annual examinations — cost of examinations — limitations. The department shall make an annual examination of the books, accounts and records of every licensee in so far as they relate to transactions with borrowers under this act and may make such additional examinations as the department deems necessary. The expenses of the department incurred in the examination of the books and records of the licensees, shall be charged at the rate of one hundred dollars (\$100) per man per day required to conduct the examinations of the respective licensees. Each licensee shall be billed by the department for the amount so charged to such licensee. If said charge is not paid within thirty (30) days after the mailing of such bill, the license of said licensee may be suspended or revoked.

History: En. Sec. 16, Ch. 283, L. 1959; amd. Sec. 7, Ch. 233, L. 1971; amd. Sec. 172, Ch. 431, L. 1975.

charge specified in the second sentence from \$60 to \$100 per man per day, and made minor changes in phraseology.

Amendments

The 1971 amendment increased the

The 1975 amendment substituted "department" for "commissioner" throughout the section.

47-217. Records—time kept.**Compiler's Notes**

Section 172, Ch. 431, Laws 1975, substi-

tuted "department" in this section for "commissioner."

47-218. Annual report—contents—verified—publication. A licensee shall annually before April 15, file a report for the preceding calendar year with the department. The report shall give information with respect to the financial condition of the licensee and shall include: The name and address of the licensee; balance sheets at the beginning and end of the calendar year; a statement of income and expenses; a reconciliation of surplus or net earnings with the balance sheets; a schedule of assets used in the consumer loan business; an analysis of charges, size of loans made and types of security on loans; an analysis of suits and foreclosures; and other relevant information the department may reasonably require concerning the business during the preceding calendar year of each licensed place of business conducted by the licensee in this state. The report shall be made under oath and be in a form prescribed by the department, which shall publish annually an analysis and summary of the reports.

History: En. Sec. 18, Ch. 283, L. 1959; amd. Sec. 115, Ch. 431, L. 1975.

fore April 15" for "on or before April 15"; substituted "department" for "commissioner" throughout the section; and made numerous changes in phraseology, punctuation and style.

Amendments

The 1975 amendment substituted "be-

47-220. Wage assignments—limitations. (1) The payment in money, credit, goods, or things in action as consideration for any sale or assignment of or order for the payment of wages, salary, commission, or other compensation for services, whether earned or to be earned, shall, for

the purpose of regulation under this act, be considered a loan secured by such assignment, and the amount by which the assigned compensation exceeds the amount of the consideration actually paid shall, for the purposes of regulation under this act, be considered interest or charges upon the loan from the date of payment to the date the compensation is payable. Such transactions shall be governed by and be subject to the provisions of this act.

(2) Any assignment or other transfer to a licensee or for the benefit of a licensee of salary, wages, commissions, or other compensation for services must be limited to not exceeding 10% of such salary, wages, commissions, or other compensation owing at the time of the notice to the debtor's employer and thereafter to become owing. However, no such assignment or order is valid unless it is in writing, signed in person by the borrower or if the borrower is married, unless it is signed in person by both husband and wife, provided that written assent of a spouse is not required when husband and wife have been and are living separate and apart when such assignment or order is made. Only if the debtor defaults in payment of the whole or some part of the loan for which such assignment or transfer is security, shall notice be given to the debtor's employer of such assignment or transfer. Such notice must be served on the employer or a managing agent of such employer, must be verified by the oath of the licensee or his agent, and must include:

(a) a correct copy of the assignment;

(b) a statement of the amount of such loan and the amount due and unpaid thereon;

(c) a copy of this section.

(3) The acceptance and honoring of any assignment shall be at the option of the employer.

History: En. Sec. 20, Ch. 283, L. 1959; or's employer of such assignment or
amd. Sec. 37, Ch. 71, L. 1977. transfer" to the end of the third sentence

Amendments

The 1977 amendment inserted the sub- of subsection (2); and made minor
section designations; added "to the debt- changes in phraseology, punctuation and
style.

47-221. Surrender of license, etc.

Compiler's Notes

Section 172, Ch. 431, Laws 1975, substi-

tuted "department" in this section for
"commissioner."

47-223. Revocation and suspension of license, when. The department, upon ten (10) days' written notice to the licensee and statement of the grounds and upon reasonable opportunity to be heard at a public hearing, if requested by the licensee, may suspend, but not for more than thirty (30) days, or revoke a license if it finds the licensee has knowingly violated any provision of this act. When the department enters an order revoking or suspending a license, it shall mail a copy of the order by registered mail to the licensee at the address for which the license was issued.

History: En. Sec. 23, Ch. 283, L. 1959; amd. Sec. 116, Ch. 431, L. 1975.

Amendments

The 1975 amendment substituted "de-

partment" for "commissioner" throughout the section; and made numerous minor changes in phraseology.

47-224. Reinstatement, when.

Compiler's Notes

Section 172, Ch. 431, Laws 1975, substi-

tuted "department" in this section for "commissioner."

47-225. Repealed.

Repeal

Section 47-225 (Sec. 25, Ch. 283, L. 1959), relating to appeals and the proce-

dure therefor, was repealed by Sec. 176, Ch. 431, Laws of 1975.

47-226. Access to records—witnesses. For the purpose of this chapter the department or its duly authorized representatives shall be given free access to the offices and places of business, files, safes, and vaults of all such persons and may require the attendance of any person and examine him under oath relative to such loans or such business or to the subject matter of any examination, investigation, or hearing and may require the production of books, accounts, papers, and records. In the event of disobedience to any subpoena or other process issued by the department or failure to produce any books, accounts, papers, and records, the department may invoke the aid of any district court of this state in requiring the evidence and testimony of witnesses and the production of books, accounts, papers, and records.

History: En. Sec. 26, Ch. 283, L. 1959; amd. Sec. 172, Ch. 431, L. 1975; amd. Sec. 38, Ch. 71, L. 1977.

Amendments

The 1975 amendment substituted "department" for "commissioner" throughout the section.

The 1977 amendment substituted "this chapter" for "this section" in the first sentence; and made minor changes in phraseology and punctuation.

Repealing Clause

Section 39 of Ch. 71, Laws 1977 read "Section 5-1125, R. C. M. 1947, is repealed."

47-227. Cease and desist orders—injunctions—receivers.

Compiler's Notes

Section 172, Ch. 431, Laws 1975, substi-

tuted "department" in this section for "commissioner."

TITLE 47A—LOCAL GOVERNMENT CODE

Part 3—Local Government Structure, Organization, and Operation

- Chapter 1. Ordinances and resolutions, 47A-3-101 to 47A-3-108.
2. Alternative forms of local government, 47A-3-201 to 47A-3-209.
3. Nonpartisan primary and general elections, 47A-3-301 to 47A-3-303.

Part 7—Powers and Limitations of Self-Government Local Governments

- Chapter 1. Powers of self-government local governments, 47A-7-101 to 47A-7-106.
2. Limitations on self-government local governments, 47A-7-201 to 47A-7-204.

Part 1—General Provisions and Definitions—Reserved

Part 2—Local Government Formation—Reserved

Part 3—Local Government Structure, Organization, and Operation

CHAPTER 1—ORDINANCES AND RESOLUTIONS

- Section 47A-3-101. Definition.
47A-3-102. Ordinance requirements.
47A-3-103. Adoption and amendment of codes by reference.
47A-3-104. Penalty for violation of ordinance.
47A-3-105. Resolution requirements.
47A-3-106. Initiative and referendum.
47A-3-107. Determination of the number of signatures required for a petition.
47A-3-108. Operation of self-government consolidated units of local government.

47A-3-101. Definition. As used in this act, “chief executive” means the elected executive in a government adopting the commission-manager form, the chairman in a government adopting the commission-chairman form, the town chairman in a government adopting the town meeting form, the commission acting as a body in a government adopting the commission form, or the officer or officers so designated in the charter in a government adopting a charter.

History: En. 47A-3-101 by Sec. 13, Ch. 477, L. 1977. **Effective Date** Section 14 of Ch. 477, Laws 1977 read “This act is effective May 1, 1977.”

47A-3-102. Ordinance requirements. (1) All ordinances shall be submitted in writing in the form prescribed by resolution of the governing body.

(2) No ordinance passed shall contain more than one comprehensive subject which shall be clearly expressed in its title, except ordinances for codification and revision of ordinances.

(3) An ordinance must be read and adopted by a majority vote of members present at two meetings of the governing body not less than 2 days apart. After the first adoption and reading, it must be posted and copies made available to the public.

(4) In the event of an emergency, the governing body may waive the second reading. An ordinance passed in response to an emergency shall recite the facts giving rise to the emergency and requires a two-thirds vote of the whole governing body for passage. An emergency ordinance shall be effective on passage and approval and shall remain effective for no more than 90 days.

(5) After passage and approval, all ordinances shall be signed by the chairman of the governing body and filed with the official or employee designated by ordinance to keep the register of ordinances.

(6) No ordinance other than an emergency ordinance shall be effective until 30 days after second and final adoption. The ordinance may provide for a delayed effective date or may provide for the ordinance to become effective upon the fulfillment of an indicated contingency.

(7) If the plan of government allows the chief executive to veto an ordinance, this power must be exercised in writing prior to its next regularly scheduled meeting of the governing body. Whenever the chief executive vetoes an ordinance, the governing body must act at the next regularly scheduled meeting to either override or confirm the veto. Whenever the veto is overridden or the executive fails to act, the ordinance shall take effect.

(8) There shall be maintained a register of ordinances in which all ordinances are entered in full after passage and approval, except when a code is adopted by reference. When a code is adopted by reference, the date and source of the code shall be entered.

(9) (a) No later than 1980 and at 5-year intervals thereafter appropriate ordinances shall be compiled into a uniform code and published.

(b) The recodification is not effective until approved by the governing body.

(10) This section merely provides a procedure for the adoption of ordinances, and shall not be construed as granting authority to adopt ordinances.

History: En. 47A-3-102 by Sec. 5, Ch. 477, L. 1977.

47A-3-103. Adoption and amendment of codes by reference. (1) Any local government may adopt or repeal an ordinance which incorporates by reference the provisions of any code or portions of any code, or any amendment thereof, properly identified as to date and source, without setting forth the provisions of the code in full. Notice of the intent to adopt a code by reference shall be published after first reading and prior to final adoption of the code. At least one copy of the code, portion, or amendment which is incorporated or adopted by reference shall be filed in the office of the clerk of the governing body and there kept available for public use, inspection, and examination. The filing requirements herein prescribed shall not be considered to be complied with unless the required copies of the codes, portion, amendment, or public record are filed with the clerk of the governing body for a period of 30 days prior to final adoption of

the ordinance which incorporates the code, portion, or amendment by reference.

(2) The governing body may adopt or amend a code by reference by an emergency ordinance and without notice. The emergency ordinance is automatically repealed 90 days following its adoption and cannot be reenacted as an emergency ordinance.

(3) The process for repealing an ordinance which adopted or amended a code by reference shall be the same as for repealing any other ordinance.

(4) The filing requirement of subsection (1) of this section shall be complied with in adopting amendments to codes.

(5) Any ordinance adopting a code, portion, or amendment by reference shall state the penalty for violating the code, portion, or amendment, or any provision thereof separately, and no part of any penalty shall be incorporated by reference.

(6) For purposes of this section, "code" means any published compilation of rules which has been prepared by various technical trade associations, model code organizations, federal agencies, or this state or any agency thereof; and shall include specifically but shall not be limited to: traffic codes, building codes, plumbing codes, electrical wiring codes, health or sanitation codes, fire prevention codes, inflammable liquids codes, together with any other code which embraces rules pertinent to a subject which is a proper local government legislative matter.

History: En. 47A-3-103 by Sec. 6, Ch. 477, L. 1977.

47A-3-104. Penalty for violation of ordinance. A local government may fix penalties for the violation of an ordinance which do not exceed a fine of \$500 or 6 months' imprisonment or both the fine and imprisonment.

History: En. 47A-3-104 by Sec. 7, Ch. 477, L. 1977.

47A-3-105. Resolution requirements. (1) All resolutions shall be submitted in the form prescribed by resolution of the governing body.

(2) Resolutions may be submitted and adopted at a single meeting of the governing body.

(3) If the plan of government allows the executive to veto resolutions, this power must be exercised in writing at the next regular meeting. If the executive fails to act, the resolution shall be approved. If the executive vetoes a resolution, the governing body must act at the same meeting or its next regularly scheduled meeting to either override or confirm the veto.

(4) After passage and approval, all resolutions shall be entered into the minutes and signed by the chairperson of the governing body.

(5) All resolutions shall be immediately effective unless a delayed effective date is specified.

History: En. 47A-3-105 by Sec. 8, Ch. 477, L. 1977.

47A-3-106. Initiative and referendum. (1) The powers of initiative and referendum are reserved to the electors of each local government.

Resolutions and ordinances within the legislative jurisdiction and power of the governing body of the local government, except those set out in subsection (2) of this section, may be proposed or amended and prior resolutions and ordinances may be repealed in the manner provided in this section.

(2) The powers of initiative shall not extend to the following:

- (a) the annual budget;
- (b) bond proceedings, except for ordinances authorizing bonds;
- (c) the establishment and collection of charges pledged for the payment of principal and interest on bonds; or
- (d) the levy of special assessments pledged for the payment of principal and interest on bonds.

(3) The electors may initiate and amend ordinances and require submission of existing ordinances to a vote of the people by petition. If submitted prior to the ordinance's effective date, a petition requesting a referendum on the ordinance shall delay the ordinance's effective date until the ordinance is ratified by the electors. A petition requesting a referendum on an emergency ordinance filed within 30 days of its effective date shall suspend the ordinance until ratified by the electors.

(4) The governing body may refer existing or proposed ordinances to a vote of the people by resolution.

(5) A petition or resolution for initiative or referendum shall:

- (a) embrace only a single comprehensive subject;
- (b) set out fully the ordinance sought by petitioners, or in the case of an amendment, set out fully the ordinance sought to be amended and the proposed amendment, or in the case of referendum, set out the ordinance sought to be repealed; and
- (c) contain the signatures of 15% of the electors of the local government.

(6) (a) The governing body may, within 60 days of receiving the petition, take the action called for in the petition. If the action is taken, the question need not be submitted to the electors.

(b) If the governing body does not, within 60 days, take the proposed action, then the question shall be submitted to the electors at the next school, primary, or general election or a special election called for that purpose. Before submitting the question to the electors, the governing body may direct that a suit be brought in district court by the local government to determine whether the petition is regular in form, has sufficient signatures, and whether the proposed action would be valid and constitutional.

(c) The complaint shall name as defendants not less than 10 or more than 20 of the petitioners. In addition to the names of the defendants, to the caption of the complaint there shall be added the words: "And all petitioners whose names appear on the petition for an ordinance filed on the _____ day of _____, in the year _____", stating the date of filing. The summons shall be similarly directed and shall be served on the defendants named therein, and in addition shall be published.

(d) If an ordinance is repealed or enacted pursuant to a proposal initiated by the electors of a local government, the governing body may not for 2 years reenact or repeal the ordinance. If during the 2-year period the governing body enacts an ordinance similar to the one repealed pursuant to a referendum of the electors, a suit may be brought to determine whether the new ordinance is a reenactment without material change of the repealed ordinance. This section shall not prevent exercise of the initiative, at any time, to procure a reenactment of an ordinance repealed pursuant to referendum of the electors.

(7) (a) Any ordinance proposed by petition or any amended ordinance proposed by petition or any referendum on an ordinance which is entitled to be submitted to the electors shall be voted on at the next regular election to be held in the local government unless:

(i) the petition asks that the question be submitted at a special election and is signed by at least 25% of the electors of the local government, in which case the governing body shall call a special election; or

(ii) the governing body calls for a special election on the question.

(b) If the adequacy of the petition is determined by the elections administrator less than 45 days prior to the next regular election, the election shall be delayed until the following regular election, unless a special election is called.

(c) Whenever a measure is ready for submission to the electors, the appropriate election official shall, in writing, notify the governing body and shall publish notice of the election and the ordinance which is to be proposed or amended. In the case of a referendum, the ordinance sought to be repealed shall be published.

(d) The question shall be placed on the ballot giving the electors a choice between accepting or rejecting the proposal.

(e) If a majority of those voting favor the proposal, it becomes effective when the election results are officially declared, unless otherwise stated in the proposal.

History: En. 47A-3-106 by Sec. 9, Ch. 477, L. 1977.

47A-3-107. Determination of the number of signatures required for a petition. In order to determine the number of signatures needed on a petition to meet the percentage requirements of this act, the number of electors shall be the number of individuals registered to vote at the last preceding general election for the local government.

History: En. 47A-3-107 by Sec. 10, Ch. 477, L. 1977.

47A-3-108. Operation of self-government consolidated units of local government. (1) Whenever existing law contains different provisions and procedures for the functioning of counties and municipalities, including but not limited to such areas as election procedures, issuance of bonds, adoption of budgets, creation of special districts, levying of taxes, and provision of services, the governing body of a self-government consolidated

unit of local government which contains at least one county and one municipality shall, by ordinance, adopt either the county or municipality provisions. The ordinance may provide for necessary changes in the statutes to accommodate the structure of the consolidated unit. This subsection applies to self-government consolidated units only in those areas where such units are subject to state law under 47A-7-201 through 47A-7-204.

(2) A combination of county and municipal offices in a self-government consolidated unit may be accomplished by ordinance whenever such a combination is necessary for carrying out a duty assigned by state law to the local government. Whenever state law imposes a duty upon a specific official or employee of a self-government consolidated unit of local government and the local government under its adopted alternative form of government does not have such an official or employee, the governing body may by ordinance assign that duty to the appropriate official or employee of the local government. The governing body of any self-government consolidated unit of local government may by ordinance assign responsibility to carry out any function or provide any service required by state law to one or more departments, officers, or employees of the local government notwithstanding the fact that the state law may assign the function or service to a specific office.

History: En. 47A-3-108 by Sec. 11, Ch. 477, L. 1977.

1975, is amended to read as follows: 'Section 23. Automatic repealer. This act, except for sections 4, 6, 14, 15, 16, and 17 [16-5115.1, 16-5115.3, 16-5115.11 to 16-5115.14], terminates on June 30, 1977.'

Compiler's Notes

Section 12, Ch. 477, Laws of 1977, read "Section 23 of Chapter 513 of Laws,

CHAPTER 2—ALTERNATIVE FORMS OF LOCAL GOVERNMENT

- Section 47A-3-201. Declaration of purpose.
 47A-3-202. Adoption of alternative forms.
 47A-3-203. Commission-executive form.
 47A-3-204. Commission-manager form.
 47A-3-205. Commission form.
 47A-3-206. Commission-chairman form.
 47A-3-207. Town meeting form.
 47A-3-208. Charter form.
 47A-3-209. Amendment of self-government charters or adopted alternative forms of government.

47A-3-201. Declaration of purpose. (1) The purpose of this chapter is to comply with article XI, section 3 (1), of the Montana constitution, which provides: "The legislature shall provide such optional or alternative forms of government that each unit or combination of units may adopt, amend, or abandon an optional or alternative form by a majority of those voting on the question."

(2) This chapter establishes the alternative forms of government for cities, towns, counties, and consolidated governments. This chapter shall be liberally construed to facilitate the adoption of a form of local government. The procedure to adopt, amend, or abandon these forms is provided in sections 16-5101 et seq.

History: En. 47A-3-201 by Sec. 1, Ch. 344, L. 1975.

Compiler's Notes

Section 1 of Ch. 106, Laws 1975 read

"There is a Title 47A in the Revised Codes of Montana, 1947, which is entitled: 'Local Government Code.'"

Section 2 of Ch. 106, Laws 1975 read "Title 47A, R. C. M. 1947, consists of nine (9) Parts which are entitled:

"Part 1. General Provisions and Definitions.

"Part 2. Local Government Formation.

"Part 3. Local Government Structure, Organization, and Operation.

"Part 4. Rules for Construction of Powers and Duties of Local Governments.

"Part 5. Powers of General Power Local Governments.

"Part 6. Services of General Power Local Governments.

"Part 7. Powers and Limitations of Self-Government Local Governments.

"Part 8. Duties of Local Governments as Agents of the State.

"Part 9. Local Government Finances."

Title of Act

An act to authorize alternative forms of local government partially implementing article XI, sections 3 and 5 of the 1972 Montana constitution and providing for a delayed effective date.

47A-3-202. Adoption of alternative forms. Each local government in the state shall adopt one of the alternative forms of government provided for in this chapter including one of each suboption authorized: the commission-executive form (which may also be called the "council-executive," the "council-mayor," or the "commission-mayor" form), the commission-manager form (which may also be called the "council-manager" form), the commission form, the commission-chairman form, the town meeting form, or the charter form.

History: En. 47A-3-202 by Sec. 1, Ch. 344, L. 1975.

47A-3-203. Commission-executive form. (1) The commission-executive form (which may be called the "council-executive," the "council-mayor," or the "commission-mayor" form) consists of an elected commission (which may be referred to as the "council") and one elected executive (who may be referred to as the "mayor") who is elected at large.

(2) The executive shall:

- (a) enforce laws, ordinances, and resolutions;
- (b) perform duties required of him by law, ordinance, or resolution;
- (c) administer affairs of the local government;
- (d) carry out policies established by the commission;
- (e) recommend measures to the commission;
- (f) report to the commission on the affairs and financial condition of the local government;

(g) execute bonds, notes, contracts, and written obligations of the commission, subject to the approval of the commission;

(h) report to the commission as the commission may require;

(i) attend commission meetings and may take part in discussions;

(j) execute the budget adopted by the commission;

(k) appoint, with the consent of the commission, all members of boards; except, the executive may appoint without the consent of the commission temporary advisory committees established by the executive.

(3) The plan of government submitted to the qualified electors shall further define the structural characteristics of the form by including one item from each of the choices listed below:

- (a) The executive:
 - (i) shall appoint one or more administrative assistants to assist him in the supervision and operation of the local government. Such administrative assistants shall be answerable solely to the executive; or
 - (ii) may appoint one or more administrative assistants to assist him in the supervision and operation of the local government. Such administrative assistants shall be answerable solely to the executive.
- (b) The executive may:
 - (i) appoint and remove all employees of the local government; or
 - (ii) appoint and remove, with the consent of a majority of the commission, all employees of the local government; or
 - (iii) appoint, with the consent of a majority of the commission, all department heads. The executive may remove department heads and may appoint and remove all other department employees; or
 - (iv) appoint and remove, with the consent of a majority of the commission, all department heads. The executive may appoint and remove all other employees of the local government.
- (c) The executive may:
 - (i) veto ordinances and resolutions, subject to override by a majority plus one of the whole number of the commission; or
 - (ii) veto ordinances and resolutions, subject to override by a two-thirds vote of the commission; or
 - (iii) sign all ordinances and resolutions with no veto power.
- (d) The executive may:
 - (i) prepare the budget and present it to the commission for adoption; or
 - (ii) prepare the budget in consultation with the commission and department heads.
- (e) The executive may:
 - (i) exercise control and supervision of the administration of all departments and boards; or
 - (ii) exercise control and supervision of all departments and boards to the degree authorized by ordinance of the commission.
- (f) A financial officer (who may be called the "treasurer"):
 - (i) shall be elected; or
 - (ii) shall be appointed by the executive with the consent of the council; or
 - (iii) shall be selected as provided by ordinance; or
 - (iv) may, at the discretion of the commission, be selected as provided by ordinance.
- (g) The commission shall be:
 - (i) elected at large; or
 - (ii) elected by districts in which candidates must reside and which are apportioned by population; or
 - (iii) elected at large and nominated by a plan of nomination that may not preclude the possibility of the majority of the electors nominating candidates for the majority of the seats on the commission from persons residing in the district or districts where the majority of the electors reside; or

- (iv) elected by any combination of districts in which candidates must reside and which are apportioned by population, and at large.
- (h) Local government elections shall be conducted on a :
 - (i) partisan basis as provided in this title ; or
 - (ii) nonpartisan basis as provided in this title.
- (i) The commission shall have a chairman who shall be :
 - (i) elected by the members of the commission from their own number for a term established by ordinance ; or
 - (ii) selected as provided by ordinance.
- (j) The presiding officer of the commission shall be :
 - (i) the chairman of the commission who may vote as other members of the commission ; or
 - (ii) the executive who may vote as the commissioners ; or
 - (iii) the executive who shall decide all tie votes of the commission, but shall have no other vote. The chairman of the commission shall preside if the executive is absent ; or
 - (iv) the executive, but he may not vote.
- (k) Commission members shall be elected for :
 - (i) concurrent terms of office ; or
 - (ii) overlapping terms of office.
- (l) The size of the commission, which shall be a number not less than three (3), shall be established when the form is adopted by the voters, and ;
 - (i) community councils of at least three (3) members shall be elected within each district to advise the commissioner from that district. Local governments conducting elections at large shall district according to population for the purpose of electing community councils ; or
 - (ii) community councils to advise commissioners may be authorized by ordinance.
- (m) The term of office of elected officials may not exceed four (4) years, and shall be established when the form is adopted by the voters.
- (4) The plan of government submitted to the qualified electors shall determine the powers of the local government unit by authorizing :
 - (a) general government powers ; or
 - (b) self-government powers.

History: En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977. division (3)(g)(iii) for "nominated by districts in which candidates must reside and which are apportioned by population, but elected at large."

Amendments

The 1977 amendment substituted sub-

47A-3-204. Commission-manager form. (1) The commission-manager form (which may be called the "council-manager" form) consists of an elected commission (which may be called the "council") and a manager appointed by the commission who shall be the chief administrative officer of the local government. The manager shall be responsible to the commission for the administration of all local government affairs placed in his charge by law, ordinance, or resolution.

(2) The manager shall be appointed by the commission for an in-

definite term on the basis of merit only, and removed only by a majority vote of the whole number of the commission.

(3) The manager shall:

- (a) enforce laws, ordinances, and resolutions;
- (b) perform the duties required of him by law, ordinance, or resolution;
- (c) administer the affairs of the local government;
- (d) direct, supervise, and administer all departments, agencies and offices of the local government unit except as otherwise provided by law or ordinance;
- (e) carry out policies established by the commission;
- (f) prepare the commission agenda;
- (g) recommend measures to the commission;
- (h) report to the commission on the affairs and financial condition of the local government;
- (i) execute bonds, notes, contracts, and written obligations of the commission, subject to the approval of the commission;
- (j) report to the commission as the commission may require;
- (k) attend commission meetings and may take part in the discussion, but he may not vote;
- (l) prepare and present the budget to the commission for its approval and execute the budget adopted by the commission;
- (m) appoint, suspend, and remove all employees of the local government except as otherwise provided by law or ordinance. Employees appointed by the manager and his subordinates shall be administratively responsible to the manager;
- (n) appoint members of temporary advisory committees established by the manager.

(4) Neither the commission nor any of its members may dictate the appointment or removal of any employee whom the manager or any of his subordinates are empowered to appoint.

(5) Except for the purpose of inquiry or investigation under this title, the commission or its members shall deal with the local government employees who are subject to the direction and supervision of the manager, solely through the manager, and neither the commission nor its members may give orders to any such employee, either publicly or privately.

(6) The plan of government submitted to the qualified electors shall further define the structural characteristics of the form by including one item from each of the choices listed below:

- (a) All members of boards, other than temporary advisory committees established by the manager, shall be appointed by:
 - (i) the chairman with the consent of the commission; or
 - (ii) the manager with the consent of the commission; or
 - (iii) the commission.
- (b) The commission shall be:
 - (i) elected at large; or

(ii) elected by districts in which candidates must reside and which are apportioned by population; or

(iii) elected at large and nominated by a plan of nomination that may not preclude the possibility of the majority of the electors nominating candidates for the majority of the seats on the commission from persons residing in the district or districts where the majority of the electors reside; or

(iv) elected by any combination of districts in which candidates must reside and which are apportioned by population, and at large.

(c) Local government elections shall be conducted on a:

(i) partisan basis as provided in this title; or

(ii) nonpartisan basis as provided in this title.

(d) The chairman of the commission shall be:

(i) elected by the members of the commission from their own number for a term established by ordinance; or

(ii) elected by the qualified electors for a term of office; or

(iii) selected as provided by ordinance.

(e) Commission members shall be elected for:

(i) concurrent terms of office; or

(ii) overlapping terms of office.

(f) The size of the commission, which shall be a number of not less than three (3), shall be established when the form is adopted by the voters, and:

(i) community councils of at least three (3) members shall be elected within each district to advise the commissioner from that district. Local governments conducting elections at-large shall district according to population for the purpose of electing community councils; or

(ii) community councils to advise commissioners may be authorized by ordinance.

(g) The term of office of elected officials may not exceed four (4) years, and shall be established when the form is adopted by the voters.

(7) The plan of government submitted to the qualified electors shall determine the powers of the local government unit by authorizing:

(a) general government powers; or

(b) self-government powers.

History: En. 47A-3-204 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 2, Ch. 351, L. 1977.

Amendments

The 1977 amendment substituted subdivision (6)(b)(iii) for "nominated by districts in which candidates must reside and which are apportioned by population, but elected at large."

47A-3-205. Commission form. (1) The commission form consists of an elected commission (which may also be called the "council") and other elected officers as provided in this section. All legislative, executive, and administrative powers and duties of the local government not specifically reserved by law or ordinance to other elected officers shall reside in the

commission. The commission shall appoint the heads of departments and other employees, except for those appointed by other elected officials. Cities and towns which adopt this form may distribute by ordinance the executive and administrative powers and duties into departments headed by individual commissioners.

(2) The plan of government submitted to the qualified electors shall further define the structural characteristics of the form by including one item from each of the choices listed below:

(a) The commission shall be:

(i) elected at large; or

(ii) elected by districts in which candidates must reside and which are apportioned by population; or

(iii) elected at large and nominated by a plan of nomination that may not preclude the possibility of the majority of the electors nominating candidates for the majority of the seats on the commission from persons residing in the district or districts where the majority of the electors reside; or

(iv) elected by any combination of districts in which candidates must reside and which are apportioned by population, and at large.

(b) Local government elections shall be conducted on a:

(i) partisan basis as provided in this title; or

(ii) nonpartisan basis as provided in this title.

(c) The chairman of the commission, who may be referred to as the "mayor", shall be the presiding officer of the commission. All members of boards and committees shall be appointed by the chairman with the consent of the commission. The chairman shall be recognized as the head of the local government unit and may vote as other members of the commission. The chairman shall be:

(i) elected by the members of the commission from their own number for a term established by ordinance; or

(ii) selected as provided by ordinance; or

(iii) elected directly by the voters for a term established by ordinance.

(d) The commission:

(i) shall appoint one or more administrative assistants to assist them in the supervision and operation of the local government; or

(ii) may appoint one or more administrative assistants to assist them in the supervision and operation of the local government.

(e) Commission members shall be elected for:

(i) concurrent terms of office; or

(ii) overlapping terms of office.

(f) The size of the commission, which shall be a number of not less than three (3), shall be established when the form is adopted by the voters, and:

(i) community councils of at least three (3) members shall be elected within each district to advise the commissioner from that district. Local governments conducting elections at-large shall district according to population for the purpose of electing community councils; or

(ii) community councils to advise commissioners may be authorized by ordinance.

(g) The term of office of elected officials may not exceed four (4) years, except the term of office for commissioners in counties adopting the form authorized by Article XI, section 3(2), of the Montana constitution, may not exceed six (6) years. Terms of office shall be established when the form is adopted by the voters.

(3) In county and consolidated local governments, the plan of government submitted to the qualified electors shall further define the structural characteristics of the form by including one item from each of the choices listed below. The officers shall have the powers and duties established by ordinance. After the establishment of any office, the commission may consolidate, as provided by law, two or more of the offices:

(a) A legal officer (who may be called the "county attorney"):

(i) shall be elected; or

(ii) shall be appointed by the local government commission; or

(iii) shall be appointed by the chairman of the local government commission; or

(iv) shall be selected as provided by ordinance; or

(v) may at the discretion of the commission be selected as provided by ordinance; or

(vi) shall not be included in this form as a separate office.

(b) A law enforcement officer (who may be called the "sheriff"):

(i) shall be elected; or

(ii) shall be appointed by the local government commission; or

(iii) shall be appointed by the chairman of the local government commission; or

(iv) shall be selected as provided by ordinance; or

(v) may at the discretion of the commission be selected as provided by ordinance; or

(vi) shall not be included in this form as a separate office.

(c) A clerk and recorder:

(i) shall be elected; or

(ii) shall be appointed by the local government commission; or

(iii) shall be appointed by the chairman of the local government commission; or

(iv) shall be selected as provided by ordinance; or

(v) may at the discretion of the commission be selected as provided by ordinance; or

(vi) shall not be included in this form as a separate office.

(d) A clerk of district court:

(i) shall be elected; or

(ii) shall be appointed by the local government commission; or

(iii) shall be appointed by the chairman of the local government commission; or

(iv) shall be selected as provided by ordinance; or

(v) may at the discretion of the commission be selected as provided by ordinance; or

- (vi) shall not be included in this form as a separate office.
- (e) A treasurer:
 - (i) shall be elected; or
 - (ii) shall be appointed by the local government commission; or
 - (iii) shall be appointed by the chairman of the local government commission; or
 - (iv) shall be selected as provided by ordinance; or
 - (v) may at the discretion of the commission be selected as provided by ordinance; or
 - (vi) shall not be included in this form as a separate office.
- (f) A surveyor:
 - (i) shall be elected; or
 - (ii) shall be appointed by the local government commission; or
 - (iii) shall be appointed by the chairman of the local government commission; or
 - (iv) shall be selected as provided by ordinance; or
 - (v) may at the discretion of the commission be selected as provided by ordinance; or
 - (vi) shall not be included in this form as a separate office.
- (g) A superintendent of schools:
 - (i) shall be elected; or
 - (ii) shall be appointed by the local government commission; or
 - (iii) shall be appointed by the chairman of the local government commission; or
 - (iv) shall be selected as provided by ordinance; or
 - (v) may at the discretion of the commission be selected as provided by ordinance; or
 - (vi) shall not be included in this form as a separate office.
- (h) An assessor:
 - (i) shall be elected; or
 - (ii) shall be appointed by the local government commission; or
 - (iii) shall be appointed by the chairman of the local government commission; or
 - (iv) shall be selected as provided by ordinance; or
 - (v) may at the discretion of the commission be selected as provided by ordinance; or
 - (vi) shall not be included in this form as a separate office.
- (i) A coroner:
 - (i) shall be elected; or
 - (ii) shall be appointed by the local government commission; or
 - (iii) shall be appointed by the chairman of the local government commission; or
 - (iv) shall be selected as provided by ordinance; or
 - (v) may at the discretion of the commission be selected as provided by ordinance; or
 - (vi) shall not be included in this form as a separate office.
- (j) A public administrator:
 - (i) shall be elected; or

- (ii) shall be appointed by the local government commission; or
- (iii) shall be appointed by the chairman of the local government commission; or
- (iv) shall be selected as provided by ordinance; or
- (v) may at the discretion of the commission be selected as provided by ordinance; or
- (vi) shall not be included in this form as a separate office.
- (k) An auditor:
 - (i) shall be elected; or
 - (ii) shall be appointed by the local government commission; or
 - (iii) shall be appointed by the chairman of the local government commission; or
 - (iv) shall be selected as provided by ordinance; or
 - (v) may at the discretion of the commission be selected as provided by ordinance; or
 - (vi) shall not be included in this form as a separate office.
- (4) Local governments that adopt this form shall have general government powers.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977.

Amendments

The 1977 amendment substituted subdivision (2)(a)(iii) for "nominated by districts in which candidates must reside and which are apportioned by population, but elected at large."

47A-3-206. Commission-chairman form. (1) The commission-chairman form consists of an elected commission (which may also be referred to as the "council"), and a commission chairman (who may also be referred to as "mayor" or as "president") elected by the members of the commission from their own number.

(2) The commission chairman (who may also be referred to as "mayor") shall be elected by the members of the commission from their own number to serve at the pleasure of the commission. He shall: be the presiding officer of the commission, be recognized as the head of the local government unit, have the power to vote as other members of the commission, be the chief executive officer of the local government, and:

- (a) enforce laws, ordinances, and resolutions;
- (b) perform duties required of him by law, ordinance, or resolution;
- (c) administer the affairs of the local government;
- (d) direct, supervise, and administer all departments, agencies, and offices of the local government, except as otherwise provided by law or ordinance;
- (e) carry out policies established by the commission;
- (f) prepare the commission agenda;
- (g) recommend measures to the commission;
- (h) report to the commission on the affairs and financial condition of the local government;
- (i) execute bonds, notes, contracts, and written obligations of the commission, subject to the approval of the commission;
- (j) report to the commission as the commission may require;

- (k) attend commission meetings and may take part in discussions;
 - (l) execute the budget adopted by the commission;
 - (m) appoint with the consent of the commission all members of boards and committees; except the chairman may appoint without the consent of the commission temporary advisory committees established by the chairman;
 - (n) appoint with the consent of a majority of the commission all department heads. The chairman may remove department heads and may appoint and remove all other employees;
 - (o) prepare the budget and present it to the commission for adoption;
 - (p) exercise control and supervision over the administration of departments and boards.
- (3) The plan of government submitted to the qualified electors shall further define the structural characteristics of the form by including one item from each of the choices listed below:
- (a) The commission shall be:
 - (i) elected at large; or
 - (ii) elected by districts in which candidates must reside and which are apportioned by population; or
 - (iii) elected at large and nominated by a plan of nomination that may not preclude the possibility of the majority of the electors nominating candidates for the majority of the seats on the commission from persons residing in the district or districts where the majority of the electors reside; or
 - (iv) elected by any combination of districts in which candidates must reside and which are apportioned by population, and at large.
 - (b) Local government elections shall be conducted on a:
 - (i) partisan basis as provided in this title; or
 - (ii) nonpartisan basis as provided in this title.
 - (c) The commission chairman:
 - (i) shall appoint one or more administrative assistants to assist him in the supervision and operation of the local government. Such administrative assistants shall be answerable solely to the chairman; or
 - (ii) may appoint one or more administrative assistants to assist him in the supervision and operation of the local government. Such administrative assistants shall be answerable solely to the chairman.
 - (d) Commission members shall be elected for:
 - (i) concurrent terms of office; or
 - (ii) overlapping terms of office.
 - (e) The size of the commission, which shall be a number of not less than five (5), shall be established when the form is adopted by the voters, and:
 - (i) community councils of at least three (3) members shall be elected within each district to advise the commissioner from that district. Local governments conducting elections at-large shall district according to population for the purpose of electing community councils; or
 - (ii) community councils to advise commissioners may be authorized by ordinance.

(f) The term of office of elected officials may not exceed four (4) years, and shall be established when the form is adopted by the voters.

(4) The plan of government submitted to the qualified electors shall determine the powers of the local government unit by authorizing:

- (a) general government powers; or
- (b) self-government powers.

History: En. 47A-3-206 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 4, Ch. 351, L. 1977.

Amendments
The 1977 amendment substituted subdivision (3)(a)(iii) for "nominated by districts in which candidates must reside and which are apportioned by population, but elected at large."

47A-3-207. Town meeting form. (1) The town meeting form consists of an assembly of the qualified electors of a town (known as a town meeting), an elected town chairman, who shall be a qualified elector, and an optional elected town meeting moderator. The town meeting form may be adopted only by incorporated cities or towns of less than two thousand (2,000) persons as determined by the most recent decennial census as conducted by the United States bureau of the census unless a more recent enumeration of inhabitants be made by the state, in which case such enumeration shall be used for the purposes of this section. Any unit of local government which adopts this form may retain it even though its population increases to more than two thousand (2,000).

(2) All legislative powers of the town shall vest in the town meeting. The town meeting may enact rules, resolutions, and ordinances.

(3) (a) Towns adopting this form shall convene an annual town meeting on the first Tuesday of March. Special town meetings may be called by the town chairman or upon petition of ten per cent (10%) of the qualified electors of the town, but in no case by less than ten (10) qualified electors.

(b) All qualified electors of the town may attend the town meeting, take part in the discussion and vote on all matters coming before the town meeting. Others may attend but shall not vote nor take part in the discussion except by a majority vote of the town meeting.

(c) A quorum shall consist of at least ten per cent (10%) of the qualified electors of the town but a higher quorum requirement may be established by a majority vote of the town meeting.

(d) The election of town officials shall be nonpartisan and shall be by a plurality of those qualified electors present and voting. All other voting in the town meeting shall be by a simple majority of those qualified electors present and voting.

(e) Election of officials shall be by secret ballot. Other voting shall be by secret ballot upon the request of at least five members of the town meeting.

(4) An agenda of the town meeting and a list of all elective and appointive offices to be filled shall be prepared by the town chairman who shall post notice at least two (2) weeks prior to the convening of all

annual and special town meetings. Upon written petition of at least ten per cent (10%) of the qualified electors of the town, but not less than ten (10) qualified electors, the town chairman shall insert a particular item or items in the agenda for the next annual or special town meeting. The town meeting agenda may include an item entitled "other business" under which any matter may be considered by the town meeting except no matter dealing with finance or taxation shall be considered under "other business."

(5) The town meeting shall elect a town chairman for a term of not less than one (1) year or more than two (2) years. An unexpired term of a town chairman shall be filled at the next annual or special town meeting.

(6) The town chairman shall be the chief executive officer of the town and he shall:

- (a) enforce laws, ordinances, and resolutions;
- (b) perform duties required of him by law, ordinance, or resolution;
- (c) administer the affairs of the town;
- (d) prepare the town meeting agenda;
- (e) attend all annual and special town meetings;
- (f) recommend measures to the town meeting;
- (g) report to the town on the affairs and financial condition of the town;
- (h) execute bonds, notes, contracts, and written obligations of the town, subject to the approval of the town;
- (i) appoint, with the consent of the town meeting, members of all boards and appoint and remove all employees of the town;
- (j) prepare the budget and present it to the town meeting for adoption;
- (k) exercise control and supervision of the administration of all departments and boards;
- (l) carry out policies established by the town meeting.

(7) Compensation of the town chairman shall be established by ordinance but shall not be reduced during the current term of the town chairman.

(8) Permanent committees to advise the town chairman and/or the town meeting may be established and dissolved by ordinance. The town chairman may establish temporary committees to advise him.

(9) The plan of government submitted to the qualified electors shall further define the structural characteristics of the form by including one item from each of the choices listed below:

- (a) The town meeting shall:
 - (i) elect a town meeting moderator for a term of one (1) year who shall be the presiding officer of all annual and special town meetings but who shall have no other governmental powers; or
 - (ii) designate the town chairman as presiding officer of all annual and special town meetings.
- (b) The town chairman:
 - (i) shall appoint an administrative assistant to assist him in the

supervision and operation of the affairs of the town. The administrative assistant shall be answerable solely to the town chairman and the town chairman may delegate powers to the administrative assistant at his discretion; or

(ii) may appoint an administrative assistant to assist him in the supervision and operation of the affairs of the town. The administrative assistant shall be answerable solely to the town chairman and the town chairman may delegate powers to the administrative assistant at his discretion.

(10) The first agenda of the first town meeting following the adoption of this form shall be established by the local study commission. At that town meeting the chairman of the local study commission shall preside over the election of the presiding officer of the town after which the presiding officer of the town shall preside.

(11) The plan of government submitted to the qualified electors shall determine the powers of the local government unit by authorizing:

- (a) general government powers; or
- (b) self-government powers.

History: En. 47A-3-207 by Sec. 1, Ch. 344, L. 1975.

47A-3-208. Charter form. (1) The purpose of this section is to comply with Article XI, section 5(1), of the Montana constitution, which provides: "(1) The legislature shall provide procedures permitting a local government unit or combination of units to frame, adopt, amend, revise, or abandon a self-government charter with the approval of a majority of those voting on the question. The procedures shall not require approval of a charter by a legislative body."

(2) Charter provisions establishing executive, legislative, and administrative structure and organization are superior to statutory provisions.

(3) A charter form of government shall possess self-government powers.

(4) Charter form of government shall be established by a charter which is a written document defining the powers, structures, privileges, rights, and duties of the unit of local government and limitations thereon.

(5) The charter shall provide for an elected legislative body, called a commission or council, or shall provide for a legislative body comprised of all qualified electors. For elected legislative bodies the charter shall specify the number of members thereof, their term of office, election on a partisan or nonpartisan basis, the grounds for their removal, and the method for filling vacancies.

(6) The charter shall provide for the nomination and election of commissions at-large, or by districts in which candidates must reside and which are apportioned by population, or by a combination of districts in which candidates must reside and which are apportioned by population and at large or elected at large and nominated by a plan of nomination that may not preclude the possibility of the majority of the electors

nominating candidates for the majority of the seats on the commission from persons residing in the district or districts where the majority of the electors reside.

(7) The charter shall specify which official of the local government will be the chief administrative and executive officer, the method of his selection, his term of office, except that it may be at the pleasure of the selecting authority if such officer is not elected by popular vote, the grounds for his removal, and his powers and duties. Notwithstanding the foregoing, the charter may allocate the chief executive and the chief administrative functions among two or more officials specified as above, or the charter may provide that chief executive and administrative functions of the local government will be performed by one or more members of the legislative body.

(8) The charter may establish other legislative, administrative, and organizational structures.

(9) A charter form of government shall have such officers, departments, boards, commissions, and agencies as are established in the charter, by local ordinance, or required by state law.

(10) Charter provisions may not conflict with the provisions of Title 47-A, Part 7 which establish statutory limitations on the powers of self-government units.

(11) Charter forms are subject to state laws establishing election, initiative and referendum procedures and charters shall not contain provisions establishing election, initiative and referendum procedures.

(12) The charter shall not contain provisions establishing or modifying local court systems.

(13) The enumeration of powers in a charter shall not be construed as a limitation or prohibition on the residual or self-governing powers granted by the constitution.

(14) The charter may contain prohibitions on the exercise of power by a unit of local government.

(15) The charter may include such provisions as may be necessary to permit an orderly transition to the new form of government.

(16) The charter shall specify the date on which the charter will take effect, except that provisions may be made for temporary partial effectiveness consistent with an orderly transition of government.

(17) The listing of charter provisions in this section shall not be construed to prevent the inclusion of additional provisions in charters.

(18) A charter may be amended only as provided by state law.

History: En. 47A-3-208 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 5, Ch. 351, L. 1977.

Amendments

The 1977 amendment added "or elected at large * * * the electors' reside" to the end of subsection (6).

"If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Effective Date

Separability Clause

Section 2 of Ch. 344, Laws 1975 read

Section 3 of Ch. 344, Laws 1975 read "This act is effective May 2, 1977."

47A-3-209. Amendment of self-government charters or adopted alternative forms of government. (1) An amendment to a self-government charter or an adopted alternative form of government may only be made by submitting the question of amendment to the electors of the local government. To be effective, a proposed amendment must receive an affirmative vote of a majority of the electors voting on the question. An amendment approved by the electors becomes effective on the first day of the local government fiscal year following the fiscal year of approval unless the question submitted to the electors provides otherwise.

(2) An amendment to a self-government charter or an adopted alternative form of government may be proposed by initiative by petition of 15% of the electors of the local government or by ordinance enacted by the governing body. The question on amendment of a charter or an adopted alternative form of government shall be submitted to the electors as soon as possible after the submission of a petition or enactment of a resolution, either at a regularly scheduled election or at a special election.

(3) The local government, by ordinance, may provide procedures for the submission and verification of initiative petitions.

History: En. 47A-3-209 by Sec. 4, Ch. 477, L. 1977.

CHAPTER 3—NONPARTISAN PRIMARY AND GENERAL ELECTIONS

Section 47A-3-301. Nonpartisan nomination.
 47A-3-302. Nonpartisan primary ballot and election.
 47A-3-303. Nonpartisan general elections.

47A-3-301. Nonpartisan nomination. (1) Each candidate for a nonpartisan primary election shall send a declaration of nomination, as prescribed in 23-3304, to the appropriate election official of the local government in which he seeks office not later than 5 p.m. 40 days prior to the date of the primary election. The declaration shall be accompanied by a petition signed by at least 25 electors of the local government requesting the candidacy.

(2) A candidate successfully completing the requirements of this section shall have his name entered on the nonpartisan primary election ballot as provided in 47A-3-302.

History: En. 47A-3-301 by Sec. 1, Ch. 477, L. 1977.

Title of Act

An act to provide for nonpartisan elections, to provide for the amendment of self-government charters or adopted alternative forms of local government, to provide for enactment of ordinances and

resolutions, to provide for local government initiative and referendum, to provide for the operation of consolidated units of local government, and to otherwise revise and clarify local government laws; amending section 23 of chapter 513 of Laws, 1975; and providing an effective date.

47A-3-302. Nonpartisan primary ballot and election. (1) Except as otherwise provided in this section, a nonpartisan primary election shall be conducted, canvassed, and its results returned in the same manner as a partisan primary election.

(2) Ballots in a nonpartisan primary election shall contain only the name of the candidate and the office to which the candidate seeks election.

(3) Electors voting at a nonpartisan primary election may vote for the number of candidates to be elected to each office.

(4) If the number of candidates to be entered on the nonpartisan primary ballot for each office does not exceed twice the number of candidates to be elected for the respective offices, a nonpartisan primary election shall not be held in that year and all candidates entered on the nonpartisan primary ballot shall be considered nominated for their respective offices and shall have their names placed on the nonpartisan general election ballot. If the number of candidates to be entered on the nonpartisan primary ballot for any particular office does exceed twice the number of persons to be elected to that office, a primary election shall be held for all offices to be voted on at the general election.

(5) Candidates for nomination, equal to twice the number to be elected at the nonpartisan general election for that office, who receive the highest number of votes cast at the nonpartisan primary or nominees determined under subsection (4) of this section are nominees for office and shall have their names entered on the nonpartisan general election ballot.

(6) In municipalities with a population of 3,500 or less, a primary election is not required and candidates shall have their names entered on the general election ballot by filing a declaration of nomination not later than 5 p.m. 40 days before the date of the election.

History: En. 47A-3-302 by Sec. 2, Ch. 477, L. 1977.

47A-3-303. Nonpartisan general elections. A nonpartisan general election shall be conducted, canvassed, and its results returned in the same manner as a partisan general election except that party designation may not appear on the ballot.

History: En. 47A-3-303 by Sec. 3, Ch. 477, L. 1977.

Part 4—Rules for Construction of Powers and Duties of Local Governments—Reserved

Part 5—Powers of General Power Local Governments—Reserved

Part 6—Services of General Power Local Governments—Reserved

Part 7—Powers and Limitations of Self-Government Local Governments

CHAPTER 1—POWERS OF SELF-GOVERNMENT LOCAL GOVERNMENTS

- Section 47A-7-101. Self-government powers.
- 47A-7-102. Authorization for self-government services and functions.
- 47A-7-103. General power government limitations not applicable.
- 47A-7-104. Legislative power vested in legislative bodies.
- 47A-7-105. State law applicable.
- 47A-7-106. Construction of self-government powers.

47A-7-101. Self-government powers. As provided by article XI, section 6 of the Montana constitution a local government unit with self-government powers may exercise any power not prohibited by the constitution, law, or charter. These powers include, but are not limited to, the powers granted to general power governments by Title 47A, Part 5.

History: En. 47A-7-101 by Sec. 1, Ch. 345, L. 1975.

Title of Act

An act establishing the powers and limitations thereon of those local government units which adopt the self-government powers authorized by article XI, section 6 of the Montana constitution and providing for a delayed effective date.

47A-7-102. Authorization for self-government services and functions. A local government with self-government powers may provide any services or perform any functions not expressly prohibited by the Montana constitution, state law, or its charter. These services and functions include, but are not limited to, those services and functions which general power government units are authorized to provide or perform by Title 47A, Part 6.

History: En. 47A-7-102 by Sec. 1, Ch. 345, L. 1975.

47A-7-103. General power government limitations not applicable. A local government unit with self-government powers which elects to provide a service or perform a function that may also be provided or performed by a general power government unit is not subject to any limitation in the provision of that service or performance of that function, except such limitations as are contained in its charter or in state law specifically applicable to self-government units.

History: En. 47A-7-103 by Sec. 1, Ch. 345, L. 1975.

47A-7-104. Legislative power vested in legislative bodies. The powers of a self-government unit unless otherwise specifically provided are vested in the local government legislative body and may be exercised only by ordinance or resolution.

History: En. 47A-7-104 by Sec. 1, Ch. 345, L. 1975.

47A-7-105. State law applicable. All state statutes shall be applicable to self-government local units until superseded by ordinance or resolution in the manner and subject to the limitations provided in this title.

History: En. 47A-7-105 by Sec. 1, Ch. 345, L. 1975.

47A-7-106. Construction of self-government powers. The powers and authority of a local government unit with self-government powers shall be liberally construed. Every reasonable doubt as to the existence of a local government power or authority shall be resolved in favor of the existence of that power or authority.

History: En. 47A-7-106 by Sec. 1, Ch. 345, L. 1975.

CHAPTER 2—LIMITATIONS ON SELF-GOVERNMENT
LOCAL GOVERNMENTS

- Section 47A-7-201. Powers denied.
47A-7-202. Powers requiring delegation.
47A-7-203. Consistency with state regulation required.
47A-7-204. Mandatory provisions.

47A-7-201. Powers denied. A local government unit with self-government powers is prohibited the exercise of the following:

(1) Any power that applies to or affects any private or civil relationship, except as an incident to the exercise of an independent self-government power;

(2) Any power that applies to or affects the provisions of Title 41 (labor), chapter 16 of Title 59 (collective bargaining for public employees), Title 87 (unemployment compensation), or Title 92 (workmen's compensation) except that subject to the provisions of those titles it may exercise any power of a public employer with regard to its employees;

(3) Any power that applies to or affects the public school system except that a local unit may impose an assessment reasonably related to the cost of any service or special benefit provided by the unit and shall exercise any power which it is required by law to exercise regarding the public school system;

(4) Any power that prohibits the grant or denial of a certificate of public convenience and necessity;

(5) Any power that establishes a rate or price otherwise determined by a state agency;

(6) Any power that applies to or affects any determination of the state department of lands with regard to any mining plan, permit, or contract;

(7) Any power that applies to or affects any determination by the department of natural resources and conservation with regard to a certificate of environmental compatibility and public need;

(8) Any power that defines as an offense conduct made criminal by state statute, or which defines an offense as a felony, or which fixes the penalty or sentence for a misdemeanor in excess of a fine of five hundred dollars (\$500) or six (6) months imprisonment or both such fine and imprisonment, except as specifically authorized by statute;

(9) Any power that applies to or affects the right to keep or bear arms, except that it has the power to regulate the carrying of concealed weapons;

(10) Any power that applies to or affects a public employee's pension or retirement rights as established by state law, except that a local government may establish additional pension or retirement systems;

(11) Any power that applies to or affects the standards of professional or occupational competence established pursuant to Title 66, (professions and occupations) as prerequisites to the carrying on of a profession or occupation.

(12) Any power that applies to or affects Title 26 (fish and game).

History: En. 47A-7-201 by Sec. 1, Ch. 345, L. 1975.

47A-7-202. Powers requiring delegation. A local government unit with self-government powers is prohibited the exercise of the following powers unless the power is specifically delegated by law:

(1) The power to authorize a tax on income or the sale of goods or services. This section shall not be construed to limit the authority of a local government to levy any other tax or establish the rate of any other tax;

(2) The power to regulate private activity beyond its geographic limits;

(3) The power to impose a duty on another unit of local government, except that nothing in this limitation shall affect the right of a self-government unit to enter into and enforce an agreement on inter-local cooperation;

(4) The power to exercise any judicial function, except as an incident to the exercise of an independent self-government administrative power;

(5) The power to regulate any form of gambling, lotteries, or gift enterprises.

History: En. 47A-7-202 by Sec. 1, Ch. 345, L. 1975.

47A-7-203. Consistency with state regulation required. (1) A local government with self-government powers is prohibited the exercise of any power in a manner inconsistent with state law or administrative regulation in any area affirmatively subjected by law to state regulation or control.

(2) The exercise of a power is inconsistent with state law or regulation if it establishes standards or requirements which are lower or less stringent than those imposed by state law or regulation.

(3) An area is affirmatively subjected to state control if a state agency or officer is directed to establish administrative rules and regulations governing the matter or if enforcement of standards or requirements established by statute is vested in a state officer or agency.

History: En. 47A-7-203 by Sec. 1, Ch. 345, L. 1975.

47A-7-204. Mandatory provisions. A local government unit with self-government powers is subject to the following provisions. These provisions are a prohibition on the self-government unit acting other than as provided:

(1) All state laws providing for the incorporation or disincorporation of cities and towns, for the annexation, disannexation or exclusion of territory from a city or town, for the creation, abandonment or boundary alteration of counties and for city-county consolidation;

(2) Title 16, chapter 51;

(3) All laws establishing legislative procedures or requirements for units of local government;

(4) All laws regulating the election of local officials;

(5) All laws which require or regulate planning or zoning;

(6) Any law directing or requiring a local government or any officer

or employee of a local government to carry out any function or provide any service;

(7) Any law regulating the budget, finance or borrowing procedures and powers of local governments, except that the mill levy limits established by state law shall not apply;

(8) Title 93, chapter 99.

History: En. 47A-7-204 by Sec. 1, Ch. 345, L. 1975.

Separability Clause

Section 2 of Ch. 345, Law 1975 read "If any part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act

is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Effective Date

Section 3 of Ch. 345, Laws 1975 read "This act is effective May 2, 1977."

Part 8—Duties of Local Governments as Agents of the State—Reserved

Part 9—Local Government Finance—Reserved

TITLE 48—MARRIAGE

- Chapter 1. Marriage defined—how and by whom contracted and authenticated, 48-126, 48-130, 48-134 to 48-137, 48-139, 48-146 to 48-148.
3. Uniform Marriage and Divorce Act, 48-301 to 48-341.

CHAPTER 1—MARRIAGE DEFINED—HOW AND BY WHOM CONTRACTED AND AUTHENTICATED

- Section 48-126. Certificate and copy prima facie evidence.
48-130. Declaration of marriage without solemnization—how made.
48-134. Proof of age and medical certificate required.
48-135. Contents and form of medical certificate.
48-136. Certificates from other state or for military personnel, when acceptable.
48-137. Definition of test—rules.
48-139. Penalties.
48-146. License application.
48-147. Applicants under influence of liquor or drug.
48-148. Applicants delinquent in support obligations.

48-101. (5695) Repealed.

Repeal

Section 48-101 (Sec. 1, p. 408, Bannack Stat.), relating to the things constituting

a marriage, was repealed by Sec. 45, Ch. 536, Laws of 1975, eff. Jan. 1, 1976.

48-102. (5696) Repealed.

Repeal

This section (Sec. 51, Civ. C. 1895), relating to the age of consent for marriage,

was repealed by Sec. 12, Ch. 232, Laws 1963.

48-103 to 48-105. (5697 to 5699) Repealed.

Repeal

Sections 48-103 to 48-105 (Secs. 52 to 54, Civ. C. 1895; Sec. 1, Ch. 6, L. 1919), relating to the manifestation and proof of

marriages, voidable marriages, and parties incompetent to marry, were repealed by Sec. 45, Ch. 536, Laws of 1975, effective Jan. 1, 1976.

48-111. (5705) Repealed.

Repeal

Section 48-111 (Sec. 55, Civ. C. 1895), relating to illegal and void subsequent

marriages, was repealed by Sec. 45, Ch. 536, Laws of 1975, effective Jan. 1, 1976.

48-112. (5706) Repealed.

Repeal

Section 48-112 (Sec. 56, Civ. C. 1895), relating to release from a marriage con-

tract, was repealed by Sec. 25, Ch. 33, Laws of 1977.

48-113. (5707) Repealed.

Repeal

This section (Sec. 57, Civ. C. 1895), relating to marriages contracted outside

the state, was repealed by Sec. 12, Ch. 232, Laws 1963.

48-115, 48-116. (5709, 5710) Repealed.**Repeal**

Sections 48-115, 48-116 (Sec. 3, p. 409, Bannack Stat.; Secs. 70, 71, Civ. C. 1895), relating to the authentication and solemn-

nization of marriages, were repealed by Sec. 45, Ch. 536, Laws of 1975, effective Jan. 1, 1976.

48-117, 48-118. (5711, 5712) Repealed.**Repeal**

These sections (Secs. 72, 73, Civ. C.

1895), relating to marriage licenses, were repealed by Sec. 12, Ch. 232, Laws 1963.

48-118.1. Repealed.**Repeal**

Section 48-118.1 (Sec. 1, Ch. 71, L. 1961; Sec. 10, Ch. 232, L. 1963; Sec. 1, Ch. 50, L. 1971), relating to marriage li-

cense applications, was repealed by Sec. 45, Ch. 536, Laws of 1975, effective Jan. 1, 1976.

48-118.2. Repealed.**Repeal**

This section (Sec. 2, Ch. 71, L. 1961), relating to applications for marriage

licenses, was repealed by Sec. 12, Ch. 232, Laws 1963.

48-119, 48-120. (5713, 5714) Repealed.**Repeal**

Sections 48-119, 48-120 (Secs. 1416, 1417, 5th Div. Comp. Stat. 1887; Sec. 1,

Ch. 72, L. 1935), relating to marriage licenses, were repealed by Sec. 45, Ch. 536, Laws of 1975, effective Jan. 1, 1976.

48-121. (5715) Repealed.**Repeal**

This section (Sec. 76, Civ. C. 1895), relating to evidence required for marriage

licenses, was repealed by Sec. 12, Ch. 232, Laws 1963.

48-122. (5716) Repealed.**Repeal**

Section 48-122 (Sec. 1419, 5th Div. Comp. Stat. 1887), relating to the duty of the person solemnizing the marriage and

the return of the certificate, was repealed by Sec. 45, Ch. 536, Laws of 1975, effective Jan. 1, 1976.

48-123. (5717) Repealed.**Repeal**

Section 48-123 (Sec. 5, p. 409, Bannack Stat.), relating to the form of the cer-

tificate, was repealed by Sec. 25, Ch. 33, Laws of 1977.

48-125. (5719) Repealed.**Repeal**

Section 48-125 (Sec. 9, p. 410, Bannack Stat.), relating to want of authority in

the person officiating, was repealed by Sec. 45, Ch. 536, Laws of 1975, effective Jan. 1, 1976.

48-126. (5720) Certificate and copy prima facie evidence. The original certificate of marriage and the record thereof by the clerk of the district court or a copy of such record duly certified by the clerk of the district court shall be received by all courts in all places as presumptive evidence of such marriage.

History: En. Sec. 10, p. 410, Bannack Stat.; re-en. Sec. 10, p. 521, Cod. Stat. 1871, re-en. Sec. 863, 5th Div. Rev. Stat. 1879; re-en. Sec. 1424, 5th Div. Comp. Stat. 1887; amd. Sec. 81, Civ. C. 1895; re-en. Sec. 3627, Rev. C. 1907; re-en. Sec. 5720, R. C. M. 1921; amd. Sec. 3, Ch. 33, L. 1977.

Amendments

The 1977 amendment deleted "made as prescribed in this chapter" after "The original certificate of marriage" at the beginning of the section; and made minor changes in punctuation.

48-127 to 48-129. (5721 to 5723) Repealed.

Repeal

Sections 48-127 to 48-129 (Secs. 1426, 1429, 5th Div. Comp. Stat. 1887), relating to marriage certificates, solemnization

forms, and disposition of fines, were repealed by Sec. 45, Ch. 536, Laws of 1975, effective Jan. 1, 1976.

48-130. (5724) Declaration of marriage without solemnization—how made. Persons desiring to consummate a marriage by written declaration in this state without the solemnization provided for in section 48-309 must prior to executing the declaration, secure the premarital test certificate required by this act, which shall be firmly attached to the declaration and shall be filed by the clerk of the district court in the county where the contract was executed. Any such declaration of marriage shall substantially contain the following:

1. The names, ages, and residences of the parties;
2. The fact of marriage;
3. Name of father and maiden name of mother of both parties, and address of each;
4. That both parties are legally competent to enter into the marriage contract.

Such declaration must be subscribed by the parties and attested by at least two (2) witnesses, and formally acknowledged before the clerk of the district court of said county.

History: En. Sec. 85, Civ. C. 1895; re-en. Sec. 3631, Rev. C. 1907; re-en. Sec. 5724, R. C. M. 1921; amd. Sec. 1, Ch. 275, L. 1959; amd. Sec. 44, Ch. 536, L. 1975. Cal. Civ. C. Sec. 75.

Amendments

The 1975 amendment substituted "section 48-309" for "section 48-116" in the first part of the section; substituted "this act" for "section 48-134" in the first part of the section; deleted a final sentence which read "unless all the provisions of this act shall be complied with the marriage shall be deemed invalid"; and made minor changes in punctuation.

Repealing Clause

Section 45 of Ch. 536, Laws 1975 read "Sections 21-101 through 21-150, 48-101, 48-103 through 48-105, 48-111, 48-115, 48-116, 48-118.1, 48-119, 48-120, 48-122, 48-125, 48-127 through 48-129, 48-133, 48-142, 48-143, 48-145, 48-149, 48-150, 48-201 through 48-203, 48-206, and 48-207, R. C. M. 1947, are repealed."

Effective Date

Section 46 of Ch. 536, Laws 1975 read "This act is effective January 1, 1976."

48-133. (5727) Repealed.

Repeal

Section 48-133 (Sec. 88, Civ. C. 1895), relating to actions to determine validity

of marriages, was repealed by Sec. 45, Ch. 536, Laws of 1975, effective Jan. 1, 1976.

48-134. Proof of age and medical certificate required. (1) Before a person who is authorized by law to issue marriage licenses may issue a marriage license, each applicant therefor shall exhibit to him a birth certificate or other satisfactory evidence of age and, if such applicant is a minor, the approval required by 48-308, and shall file with him a medical certificate from a duly qualified physician, licensed to practice medicine and surgery in any state or United States territory, or any other person authorized by laws of Montana to make such a medical certificate, which certificate shall state that the applicant has been given such an examination, including a standard serological test, made not more than 20 days before the date of issuance of the license, and that the report of the results of the serological test has been exhibited to the applicant and that each party to the proposed marriage contract has examined the report of the serological test of the other party to the proposed contract.

(2) A person who by law is validly able to obtain a marriage license in this state is also validly able to give consent to any examinations and tests required by this section. In submitting the blood specimen to the laboratory, the physician or any other person authorized by the laws of Montana to make such a medical certificate shall designate that it is a premarital test.

History: En. Sec. 1, Ch. 208, L. 1947; amd. Sec. 1, Ch. 21, L. 1959; amd. Sec. 1, Ch. 248, L. 1973; amd. Sec. 4, Ch. 33, L. 1977.

Amendments

The 1973 amendment divided the former section into subsections (1) and (2); deleted "as may be necessary for the discovery of syphilis" following "serologi-

cal test" in subsection (1); and made minor changes in style and phraseology.

The 1977 amendment substituted "the approval required by 48-308" for "the consent required by section 48-118" in subsection (1); substituted "medical certificate" for "certificate" throughout the section; and made minor changes in phraseology, punctuation and style.

48-135. Contents and form of medical certificate. (1) The medical certificate shall contain a statement from the person in charge of the laboratory making the test or authorized to make such reports, setting forth:

- (a) the name of the test;
- (b) the date it was made;
- (c) the name and address of the physician or other person authorized under the laws of Montana to make the test;
- (d) to whom the test was sent; and
- (e) the name and address of the person whose blood was tested.

(2) In the event that an error is discovered in the results of the test, such results will be expunged from the records of the department of health and environmental sciences.

(3) The certificate and statement shall be on a form to be provided and distributed by the department of health and environmental sciences to all county clerks of the court in the state and to laboratories in this state approved by the department. This form is hereinafter referred to in this act as "the certificate form".

History: En. Sec. 2, Ch. 208, L. 1947; amd. Sec. 104, Ch. 349, L. 1974; amd. Sec. 5, Ch. 33, L. 1977.

Amendments

The 1974 amendment substituted "department of health and environmental sciences" throughout the section for "Montana state board of health."

The 1977 amendment inserted the subsection and subdivision designations; inserted "medical" before "certificate" at the beginning of subsection (1); and made minor changes in phraseology, punctuation and style.

48-136. Certificates from other state or for military personnel, when acceptable. Certificate forms provided by other states having comparable laws will be accepted for persons who have been examined and who have received a standard serological test outside of Montana, if such examinations and tests are performed not more than twenty (20) days before the issuance of a marriage license. Certificates provided by the United States armed forces will be accepted for military personnel, if such certificates are signed by a medical officer commissioned in the United States armed forces or United States public health service; and the certificates state the examinations are standard serological tests and were performed not more than twenty (20) days before the issuance of the marriage license.

History: En. Sec. 3, Ch. 208, L. 1947; amd. Sec. 2, Ch. 248, L. 1973.

Amendments

The 1973 amendment inserted "stand-

ard" before "serological" in the first and second sentences; substituted "armed forces" for "army or navy" in the second sentence; and made minor changes in style and phraseology.

48-137. Definition of test—rules. For the purpose of this act, a standard serological test shall be a test for rubella immunity and syphilis, as approved by the department of health and environmental sciences. An approved laboratory shall be the laboratory of the department or a laboratory approved by that department. Any other state or United States public health service or United States armed forces laboratory shall be considered approved for the purposes of this act. Such laboratory test may be made on request at the laboratory of the department of health and environmental sciences. Reasonable rules for reports to be submitted by any laboratory making tests and the manner of furnishing the reports to the certifying physician and the state shall be adopted by the department of health and environmental sciences.

History: En. Sec. 4, Ch. 208, L. 1947; amd. Sec. 3, Ch. 248, L. 1973; amd. Sec. 6, Ch. 33, L. 1977.

Amendments

The 1973 amendment inserted "rubella immunity," in the first sentence; substituted "department of health and environmental sciences" for "Montana state board of health" throughout the section;

substituted "armed forces" for "army or navy" in the third sentence; and made minor changes in style, phraseology and punctuation.

The 1977 amendment substituted "rubella immunity and syphilis" for "syphilis, rubella immunity" in the first sentence; and made minor changes in phraseology and punctuation.

48-139. Penalties. (1) An applicant for a marriage license, a physician or other person authorized by the laws of Montana to make a medical certificate or any person in charge of or authorized to make reports or statements for a laboratory who misrepresents his identity or any of the

facts called for by the certificate form prescribed by this act, any licensing officer who issues a marriage license without having received the certificate form or who has reason to believe that any of the facts on the certificate form have been misrepresented and nevertheless issues a marriage license, or any person who otherwise fails to comply with the provisions of this act is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$100.

(2) Medical certificates, laboratory statements or reports, and applications referred to in this act are confidential and may not be divulged to or open to inspection by any person other than state or local health officers or their representatives. A person who divulges such information or opens to inspection such certificates, statements, reports, or applications, without authority, to any person not by law entitled to the same is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$100.

History: En. Sec. 6, Ch. 208, L. 1947; amd. Sec. 7, Ch. 33, L. 1977.

Amendments

The 1977 amendment inserted the subsection designations; inserted "medical" before "certificates" in two places; deleted

"and the information therein contained" before "are confidential" in the first sentence of subsection (2); inserted "or applications" in the second sentence of subsection (2); and made minor changes in phraseology, punctuation and style.

48-140. Expense of administering act.

Compiler's Notes

Section 104, Ch. 349, Laws 1974, substituted "department of health and en-

vironmental sciences" throughout this section for "state board of health."

48-142, 48-143. Repealed.

Repeal

Sections 48-142, 48-143 (Secs. 1, 2, Ch. 232, L. 1963; Sec. 13, Ch. 240, L. 1971; Sec. 20, Ch. 94, L. 1973), relating to legislative intent, public policy, capacity to

marry, consent of parent or guardian, and underage marriages, were repealed by Sec. 45, Ch. 536, Laws of 1975, effective Jan. 1, 1976.

48-144. Repealed.

Repeal

Section 48-144 (Sec. 3, Ch. 232, L. 1963), relating to the form for an appli-

cation for a marriage license, was repealed by Sec. 25, Ch. 33, Laws of 1977.

48-145. Repealed.

Repeal

Section 48-145 (Sec. 4, Ch. 232, L. 1963), relating to advice to marriage li-

cense applicants, was repealed by Sec. 45, Ch. 536, Laws of 1975, effective Jan. 1, 1976.

48-146. License application. (1) No Montana resident may be joined in marriage within this state until a license has been obtained for that purpose from the clerk of the district court of the county in which one of the parties has resided for at least 5 days immediately prior to making application therefor.

(2) A license so issued shall authorize a marriage ceremony to be performed in the county where the license is issued or in any other county of this state.

(3) If both parties are nonresidents of the state, the license may be obtained from the clerk of the district court of the county where the marriage ceremony is to be performed. If one of the persons is a nonresident of the county where the license is to issue, his part of the application may be completed and sworn to (or affirmed) before the person authorized to accept such applications in the county and state in which he resides.

History: En. Sec. 5, Ch. 232, L. 1963;
amd. Sec. 8, Ch. 33, L. 1977.

Amendments

The 1977 amendment inserted the subsection designations; and made minor changes in phraseology, punctuation and style.

48-147. Applicants under influence of liquor or drug. No license to marry shall be issued if, at the time of making application, either of the applicants is under the influence of intoxicating liquor or narcotic drug.

History: En. Sec. 6, Ch. 232, L. 1963.

48-148. Applicants delinquent in support obligations. No license to marry shall be issued by any clerk of the district court if either of the applicants for a license is or has been failing to support lawful dependents when ordered to do so by a court having jurisdiction, unless a judge of a court of record after hearing shall determine that despite such failure said applicant is financially able to discharge the duty to support existing dependents and those resulting from the contemplated marriage and shall authorize the clerk to issue the license. The judge shall have authority to require that the applicant post sufficient security to insure the performance of the support obligation to existing dependents.

History: En. Sec. 7, Ch. 232, L. 1963.

48-149, 48-150. Repealed.

Repeal

Sections 48-149, 48-150 (Secs. 8, 9, Ch. 232, L. 1963), relating to notice of application, objections to marriage, license re-

fusal or issuance, waiting period, and the validity of foreign marriages, were repealed by Sec. 45, Ch. 536, Laws of 1975, effective Jan. 1, 1976.

48-151. Repealed.

Repeal

This section (Sec. 11, Ch. 232, L. 1963), relating to the waiting period after di-

vorce, was repealed by Sec. 1, Ch. 63, Laws 1967.

CHAPTER 2—ANNULLING MARRIAGE

48-201 to 48-203. (5728 to 5730) Repealed.

Repeal

Sections 48-201 to 48-203 (Secs. 100, 110, 111, Civ. C. 1895; Secs. 1, 2, Ch. 169, L. 1963), relating to void marriages,

causes for annulling marriages, and actions for annulment, were repealed by Sec. 45, Ch. 536, Laws of 1975, effective Jan. 1, 1976.

48-204, 48-205. (5731, 5732) Repealed.

Repeal

These sections (Secs. 112, 113, Civ. C. 1895), relating to children of annulled

marriages, were repealed by Sec. 4, Ch. 169, L. 1963.

48-206, 48-207. (5733) Repealed.**Repeal**

Sections 48-206, 48-207 (Sec. 114, Civ. C. 1895; Sec. 3, Ch. 169, L. 1963), relating to the effect of annulment on the parties

and on legitimacy of children, were repealed by Sec. 45, Ch. 536, Laws of 1975 effective Jan. 1, 1976.

CHAPTER 3—UNIFORM MARRIAGE AND DIVORCE ACT

- Section 48-301. Short title.
 48-302. Purposes of act.
 48-303. Uniformity of application and construction.
 48-304. Formalities.
 48-305. Form of application, license, certificate, and consent.
 48-306. License to marry.
 48-307. Effective date of license.
 48-308. Judicial approval.
 48-309. Solemnization and registration.
 48-310. Prohibited marriages.
 48-311. Declaration of invalidity.
 48-312. Putative spouse.
 48-313. Application.
 48-314. Validity of common law marriage.
 48-315. Application of the Montana rules of civil procedure to proceedings under this act.
 48-316. Dissolution of marriage—legal separation.
 48-317. Procedure—commencement—pleadings—abolition of existing defenses.
 48-318. Temporary order or temporary injunction.
 48-319. Irretrievable breakdown.
 48-320. Separation agreement.
 48-321. Disposition of property.
 48-322. Maintenance.
 48-323. Child support.
 48-324. Representation of child.
 48-325. Payment of maintenance or support to court.
 48-326. Assignments.
 48-327. Costs—attorney's fees.
 48-328. Decree.
 48-329. Independence of provisions of decree or temporary order.
 48-330. Modification and termination of provisions for maintenance, support, and property disposition.
 48-331. Jurisdiction—commencement of proceedings.
 48-332. Best interest of child.
 48-333. Temporary orders.
 48-334. Interviews.
 48-335. Investigations and reports.
 48-336. Hearings.
 48-337. Visitation.
 48-338. Judicial supervision.
 48-339. Modification.
 48-340. Affidavit practice.
 48-341. Application.

48-301. Short title. This act may be cited as the "Uniform Marriage and Divorce Act."

History: En. 48-301, by Sec. 1, Ch. 536, L. 1975.

Title of Act

An act to revise the marriage and dissolution of marriage laws of this state by adopting the provisions of the Uniform Marriage and Divorce Act as recommended by the national conference of commissioners on uniform state laws;

amending section 48-130, R. C. M. 1947; and repealing sections 21-101 through 21-150, 48-101, 48-103 through 48-105, 48-111, 48-115, 48-116, 48-118.1, 48-119, 48-120, 48-122, 48-125, 48-127 through 48-129, 48-133, 48-142, 48-143, 48-145, 48-149, 48-150, 48-201 through 48-203, 48-206, and 48-207, R. C. M. 1947; and providing an effective date.

48-302. Purposes of act. This act shall be liberally construed and applied to promote its underlying purposes, which are to:

- (1) provide adequate procedures for the solemnization and registration of marriage;
- (2) strengthen and preserve the integrity of marriage and safeguard family relationships;
- (3) promote the amicable settlement of disputes that have arisen between parties to a marriage;
- (4) mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage;
- (5) make reasonable provision for spouse and minor children during and after litigation; and
- (6) make the law of legal dissolution of marriage effective for dealing with the realities of matrimonial experience by making irretrievable breakdown of the marriage relationship the sole basis for its dissolution.

History: En. 48-302 by Sec. 2, Ch. 536, L. 1975.

48-303. Uniformity of application and construction. This act shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this act among those states which enact it.

History: En. 48-303 by Sec. 3, Ch. 536, L. 1975.

48-304. Formalities. Marriage is a personal relationship between a man and a woman arising out of a civil contract to which the consent of the parties is essential. A marriage licensed, solemnized, and registered as provided in this act is valid in this state. A marriage may be contracted, maintained, invalidated, or dissolved only as provided by the law of this state.

History: En. 48-304 by Sec. 4, Ch. 536, L. 1975.

DECISIONS UNDER FORMER LAW

Right of Consortium

The mutual rights which arise in the husband and wife upon marriage, termed contractual or legal rights, included rights which are embraced within the term consortium. *Duffy v. Lipsman-Fulkerson & Co.*, 200 F Supp 71, 73; *Dutton v. Hightower & Lubrecht Constr. Co.*, 214 F Supp 298, 300.

Under former section 48-101 and section 36-101 a woman by her marriage obtained a contractual right to consortium. *Dutton v. Hightower & Lubrecht Constr.*, 214 F Supp 298, 300, distinguished in 266 F Supp 671.

48-305. Form of application, license, certificate, and consent. (1) The director of the department of health and environmental sciences shall prescribe the form for an application for a marriage license, which shall include the following information:

(a) name, sex, address, date and place of birth of each party to the proposed marriage;

(b) if either party was previously married, his name, and the date, place, and court in which the marriage was dissolved or declared invalid or the date and place of death of the former spouse;

(c) name and address of the parents or guardian of each party;

(d) whether the parties are related to each other and, if so, their relationship; and

(e) the name and date of birth of any child, of whom both parties are parents, born prior to the making of the application unless their parental rights and the parent and child relationship with respect to the child have been terminated.

(2) The director of the department of health and environmental sciences shall prescribe the forms for the marriage license, the marriage certificate, and the consent to marriage.

History: En. 48-305 by Sec. 5, Ch. 536,
L. 1975.

48-306. License to marry. When a marriage application has been completed and signed by both parties to a prospective marriage and at least one (1) party has appeared before the clerk of the district court and paid the marriage license fee of fifteen dollars (\$15), the clerk of the district court shall issue a license to marry and a marriage certificate form upon being furnished:

(1) satisfactory proof that each party to the marriage will have attained the age of eighteen (18) years at the time the marriage license is effective, or will have attained the age of sixteen (16) years and has obtained judicial approval as provided in section 48-308; and

(2) satisfactory proof that the marriage is not prohibited; and

(3) a certificate of the results of any medical examination required by the laws of this state.

History: En. 48-306 by Sec. 6, Ch. 536,
L. 1975.

48-307. Effective date of license. A license to marry becomes effective throughout this state three (3) days after the date of issuance, unless the judge of the district court orders that the license is effective when issued, and expires one hundred eighty (180) days after it becomes effective.

History: En. 48-307 by Sec. 7, Ch. 536,
L. 1975.

48-308. Judicial approval. (1) The district court may order the clerk of the district court to issue a marriage license and a marriage certificate form to a party aged sixteen (16) or seventeen (17) years who has no parent capable of consenting to his marriage, or has the consent of both parents, or of the parent having the actual care, custody, and control, to his marriage, if capable of giving consent, or of his guardian. The court may

require both parties to participate in a reasonable period of marriage counseling with a designated counselor as a condition of the order for issuance of a marriage license and a marriage certificate form under this section.

(2) A marriage license and a marriage certificate form may be issued under this section only if the court finds that the underaged party is capable of assuming the responsibilities of marriage and the marriage will serve his best interest. Pregnancy alone does not establish that the best interest of the party will be served.

(3) The district court shall authorize performance of a marriage by proxy upon the showing required by the provisions on solemnization.

History: En. 48-308 by Sec. 8, Ch. 536, L. 1975.

48-309. Solemnization and registration. (1) A marriage may be solemnized by a judge of a court of record, by a public official whose powers include solemnization of marriages, by a mayor or justice of the peace, or in accordance with any mode of solemnization recognized by any religious denomination, Indian nation or tribe, or native group. Either the person solemnizing the marriage or, if no individual acting alone solemnized the marriage, a party to the marriage shall complete the marriage certificate form and forward it to the clerk of the district court.

(2) If a party to a marriage is unable to be present at the solemnization, he may authorize in writing a third person to act as his proxy. If the person solemnizing the marriage is satisfied that the absent party is unable to be present and has consented to the marriage, he may solemnize the marriage by proxy. If he is not satisfied, the parties may petition the district court for an order permitting the marriage to be solemnized by proxy.

(3) Upon receipt of the marriage certificate, the clerk of the district court shall register the marriage.

(4) The solemnization of the marriage is not invalidated by the fact that the person solemnizing the marriage was not legally qualified to solemnize it, if either party to the marriage believed him to be so qualified.

History: En. 48-309 by Sec. 9, Ch. 536, 1975; amd. Sec. 9, Ch. 33, L. 1977.

Amendments

The 1977 amendment inserted "by a mayor or justice of the peace" in the first sentence of subsection (1); and made minor changes in punctuation.

48-310. Prohibited marriages. (1) The following marriages are prohibited:

(a) a marriage entered into prior to the dissolution of an earlier marriage of one of the parties;

(b) a marriage between an ancestor and a descendant, or between a brother and a sister, whether the relationship is by the half or the whole blood, or between first cousins;

(c) a marriage between an uncle and a niece or between an aunt and a nephew, whether the relationship is by the half or the whole blood.

(2) Parties to a marriage prohibited under this section who cohabit after removal of the impediment are lawfully married as of the date of the removal of the impediment.

(3) Children born of a prohibited marriage are legitimate.

History: En. 48-310 by Sec. 10, Ch. 536, L. 1975.

DECISIONS UNDER FORMER LAW

Prosecution for Bigamy

Although bigamous marriage may have been void from beginning for civil purposes, it nevertheless rendered subsequent marriage bigamous under former section 94-701 for criminal purposes, unless defendant could show that previous bigamous marriage was pronounced void, annulled or dissolved by competent court as provided under former section 94-702. *Crosby v. Ellsworth*, 431 F 2d 35.

Voidness of Former Marriage

Under former section 94-702 voidness of former marriage must have been declared by a court of competent jurisdiction; such a determination of voidness could not be made under former section 48-111 by the person involved to avoid being charged with the crime of bigamy under former sections 94-701 and 94-702. *State v. Crosby*, 148 M 307, 420 P 2d 431, 433.

48-311. Declaration of invalidity. (1) The district court shall enter its decree declaring the invalidity of a marriage entered into under the following circumstances:

(a) a party lacked capacity to consent to the marriage at the time the marriage was entered into, either because of mental incapacity or infirmity or because of the influence of alcohol, drugs, or other incapacitating substances, or a party was induced to enter into a marriage by force or duress, or by fraud involving the essentials of marriage;

(b) a party lacks the physical capacity to consummate the marriage by sexual intercourse, and at the time the marriage was entered into the other party did not know of the incapacity;

(c) a party was under the age of sixteen (16) years or was aged sixteen (16) or seventeen (17) years and did not have the consent of his parents or guardian or judicial approval; or

(d) the marriage is prohibited.

(2) A declaration of invalidity under subsection (1)(a) through (c) may be sought by any of the following persons and must be commenced within the times specified, but in no event may a declaration of invalidity be sought after the death of either party to the marriage:

(a) for lack of capacity to consent because of mental incapacity or infirmity, no later than one (1) year after the petitioner obtained knowledge of the described condition;

(b) for lack of capacity to consent because of the influence of alcohol, drugs, or other incapacitating substances, no later than one (1) year after the petitioner obtained knowledge of the described condition;

(c) for lack of capacity to consent because of force, duress or fraud, no later than two (2) years after the petitioner obtained knowledge of the described condition;

(d) for the reason set forth in subsection (1)(b), by either party, no later than four (4) years after the petitioner obtained knowledge of the described condition;

(e) for the reason set forth in subsection (1)(c), by the underaged party, his parent or guardian, prior to the time the underaged party reaches the age at which he could have married without satisfying the omitted requirement.

(3) A declaration of invalidity for the reason set forth in subsection (1)(d) may be sought by either party, the legal spouse in case of a bigamous marriage, the county attorney, or a child of either party, at any time prior to the death of one (1) of the parties.

(4) Children born of a marriage declared invalid are legitimate.

(5) Unless the court finds, after a consideration of all relevant circumstances, including the effect of a retroactive decree on third parties, that the interests of justice would be served by making the decree not retroactive, it shall declare the marriage invalid as of the date of the marriage. The provisions of this act relating to property rights of the spouses, maintenance, support, and custody of children on dissolution of marriage are applicable to nonretroactive decrees of invalidity.

History: En. 48-311 by Sec. 11, Ch. 536, L. 1975; amd. Sec. 1, Ch. 279, L. 1977.

Amendments

The 1977 amendment substituted "entered into" for "solemnized" in subdivisions (1)(a) and (1)(b).

DECISIONS UNDER FORMER LAW

Necessity for Judicial Declaration

In view of statute providing that either party to void marriage could have it declared so judicially, former statute making it unlawful to marry again until six months after a judgment of divorce meant

that marriage in violation thereof should be void only from time its nullity was declared so judicially. *State ex rel. Angvall v. District Court*, 151 M 483, 444 P 2d 370.

48-312. Putative spouse. Any person who has cohabited with another to whom he is not legally married in the good faith belief that he was married to that person is a putative spouse until knowledge of the fact that he is not legally married terminates his status and prevents acquisition of further rights. A putative spouse acquires the rights conferred upon a legal spouse, including the right to maintenance following termination of his status, whether or not the marriage is prohibited (section 48-310) or declared invalid (section 48-311). If there is a legal spouse or other putative spouses, rights acquired by a putative spouse do not supersede the rights of the legal spouse or those acquired by other putative spouses, but the court shall apportion property, maintenance, and support rights among the claimants as appropriate in the circumstances and in the interests of justice.

History: En. 48-312 by Sec. 12, Ch. 536, L. 1975.

48-313. Application. All marriages contracted within this state prior to the effective date of this act, or outside the state, that were valid at the time of the contract or subsequently validated by the laws of the place in which they were contracted or by the domicil of the parties, are valid in this state.

History: En. 48-313 by Sec. 13, Ch. 536, L. 1975.

48-314. Validity of common law marriage. Common law marriages are not invalidated by this act. Declarations of marriage pursuant to sections 48-130 through 48-132 are not invalidated by this act.

History: En. 48-314 by Sec. 14, Ch. 536, L. 1975.

DECISIONS UNDER FORMER LAW

Common-law Marriage

Finding that claimant and deceased workman had been married at common law was not supported by evidence, instances of their cohabitation warranting conclusion of meretricious relations as easily as any other. *Miller v. Townsend Lumber Co.*, 152 M 210, 448 P 2d 148.

Man and woman who exchanged wedding rings, mutually declared their marriage, and thereafter openly lived together, were legally married even though wife continued to use her previous name for business purposes. *Estate of Swanson*, 160 M 271, 502 P 2d 33.

Evidence of cohabitation alone was insufficient to justify findings of common-law marriage under former law. In re

Estate of Slavens, — M —, 509 P 2d 293, 295.

In view of statute recognizing consensual or common-law marriage, presumption that man and woman deporting themselves as husband and wife had entered into lawful contract of marriage was itself proof of marriage, and was overcome as matter of law only when in light of proved facts reasonable men could no longer find in accordance with the presumed fact; presumption was not overcome by the fact that mother claimed a ceremonial marriage and produced no evidence of mutual consent to common-law marriage. *Spradlin v. United States*, 262 F Supp 502.

48-315. Application of the Montana rules of civil procedure to proceedings under this act. (1) Except for proceedings coming under the uniform child custody jurisdiction act, the Montana rules of civil procedure apply to all proceedings under this act, except as otherwise provided in this act.

(2) A proceeding for dissolution of marriage, legal separation, or declaration of invalidity of marriage shall be entitled "In re the Marriage of _____ and _____". A custody or support proceeding shall be entitled "In re the (Custody) (Support) of _____".

(3) The initial pleading in all proceedings under this act shall be denominated a petition. A responsive pleading shall be denominated a response. Other pleadings, and all pleadings in other matters under this act, shall be denominated as provided in the Montana rules of civil procedure.

(4) In this act, "decree" includes "judgment".

(5) A decree of dissolution or of legal separation, if made, shall not be awarded to one of the parties, but shall provide that it affects the status previously existing between the parties in the manner decreed.

History: En. 48-315 by Sec. 15, Ch. 536, L. 1975; amd. Sec. 26, Ch. 537, L. 1977.

for proceedings coming under the uniform child custody jurisdiction act" at the beginning of subsection (1); and made minor changes in style.

Amendments

The 1977 amendment inserted "Except

48-316. Dissolution of marriage—legal separation. (1) The district court shall enter a decree of dissolution of marriage if:

(a) the court finds that one of the parties, at the time the action was commenced, was domiciled in this state, or was stationed in this state

while a member of the armed services, and that the domicil or military presence has been maintained for ninety (90) days next preceding the making of the findings;

(b) the court finds that the marriage is irretrievably broken, which findings shall be supported by evidence

(i) that the parties have lived separate and apart for a period of more than one hundred eighty (180) days next preceding the commencement of this proceeding, or

(ii) that there is serious marital discord which adversely affects the attitude of one or both of the parties towards the marriage;

(c) the court finds that the conciliation provisions of the Montana Conciliation Law and of section 48-319 either do not apply or have been met; and

(d) to the extent it has jurisdiction to do so, the court has considered, approved, or made provision for child custody, the support of any child entitled to support, the maintenance of either spouse, and the disposition of property; or provided for a separate, later hearing to complete these matters.

(2) If a party requests a decree of legal separation rather than a decree of dissolution of marriage, the court shall grant the decree in that form unless the other party objects.

History: En. 48-316 by Sec. 16, Ch. 535, L. 1975.

DECISIONS UNDER FORMER LAW

Divorce Granted to Defendant

Where plaintiff filed complaint seeking divorce, then defendant filed cross-complaint, judge had discretion to find that plaintiff had not proven his allegations but that defendant had proven hers, and to grant divorce to defendant. *Whitman v. Whitman*, — M —, 519 P 2d 966.

Jurisdiction Over Indian Divorce

State of Montana had jurisdiction over

divorce action brought by an Indian plaintiff against an Indian defendant, both residing on an Indian reservation, since federal law has not pre-empted state activities in the area of marriage and divorce and the tribe had determined not to exercise jurisdiction in that area by virtue of a tribal enactment. *State ex rel. Iron Bear v. District Court*, 162 M 335, 512 P 2d 1292, distinguished in 424 US —, 47 L Ed 2d —, 96 S Ct 943.

48-317. Procedure—commencement—pleadings—abolition of existing defenses. (1) The verified petition in a proceeding for dissolution of marriage or legal separation shall allege that the marriage is irretrievably broken and shall set forth:

(a) the age, occupation, and residence of each party and his length of residence in this state;

(b) the date of the marriage and the place at which it was registered;

(c) that the jurisdictional requirements of 48-316 exist and that the marriage is irretrievably broken in that either:

(i) the parties have lived separate and apart for a period of more than 180 days next preceding the commencement of this proceeding; or

(ii) there is serious marital discord which adversely affects the attitude of one or both of the parties towards the marriage, and there is no reasonable prospect of reconciliation;

(d) the names, ages, and addresses of all living children of the marriage and whether the wife is pregnant;

(e) any arrangements as to support, custody, and visitation of the children and maintenance of a spouse; and

(f) the relief sought.

(2) Either or both parties to the marriage may initiate the proceeding.

(3) If a proceeding is commenced by one of the parties, the other party must be served in the manner provided by the Montana rules of civil procedure and may within 20 days after the date of service file a verified response. No decree may be entered until 20 days after the date of service.

(4) Previously existing defenses to divorce and legal separation, including but not limited to condonation, connivance, collusion, recrimination, insanity, and lapse of time, are abolished.

(5) The court may join additional parties proper for the exercise of its authority to implement this act.

History: En. 48-317 by Sec. 17, Ch. 536, L. 1975; amd. Sec. 10, Ch. 33, L. 1977.

Amendments

The 1977 amendment deleted former subsection (1) which provided that all proceedings under the act were to be

commenced as provided by the Montana rules of civil procedure; redesignated subsections (2) through (6) as subsections (1) through (5); and made minor changes in phraseology, punctuation and style.

48-318. Temporary order or temporary injunction. (1) In a proceeding for dissolution of marriage or for legal separation, or in a proceeding for disposition of property or for maintenance or support following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, either party may move for temporary maintenance or temporary support of a child of the marriage entitled to support. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

(2) As a part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the court to issue a temporary injunction for any of the following relief:

(a) restraining any person from transferring, encumbering, concealing, or otherwise disposing of any property except in the usual course of business or for the necessities of life, and, if so restrained, requiring him to notify the moving party of any proposed extraordinary expenditures made after the order is issued;

(b) enjoining a party from molesting or disturbing the peace of the other party or of any child;

(c) excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm would otherwise result;

(d) enjoining a party from removing a child from the jurisdiction of the court; and

(e) providing other injunctive relief proper in the circumstances.

(3) The court may issue a temporary restraining order without requiring notice to the other party only if it finds on the basis of the moving

affidavit or other evidence that irreparable injury will result to the moving party if no order is issued until the time for responding has elapsed.

(4) A response may be filed within twenty (20) days after service of notice of motion or at the time specified in the temporary restraining order.

(5) On the basis of the showing made and in conformity with sections 48-322 and 48-323, the court may issue a temporary injunction and an order for temporary maintenance or support in amounts and on terms just and proper in the circumstance.

(6) A temporary order or temporary injunction:

(a) does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings in the proceeding;

(b) may be revoked or modified before final decree on a showing by affidavit of the facts necessary to revocation or modification of a final decree under section 48-330; and

(c) terminates when the final decree is entered or when the petition for dissolution or legal separation is voluntarily dismissed.

History: En. 48-318 by Sec. 18, Ch. 536, L. 1975.

DECISIONS UNDER FORMER LAW

Temporary Support Payments

On application for money judgment for delinquent temporary support payments, it was not error to order sum of \$8,174 plus interest to be paid by defendant in 63 monthly installments of \$150. *Latus v. Latus*, — M —, 517 P 2d 356.

48-319. Irretrievable breakdown. (1) If both of the parties by petition or otherwise have stated under oath or affirmation that the marriage is irretrievably broken, or one of the parties has so stated and the other has not denied it, the court, after hearing, shall make a finding whether the marriage is irretrievably broken.

(2) If one of the parties has denied under oath or affirmation that the marriage is irretrievably broken, the court shall consider all relevant factors, including the circumstances that gave rise to filing the petition and the prospect of reconciliation, and shall:

(a) make a finding whether the marriage is irretrievably broken; or

(b) continue the matter for further hearing not fewer than thirty (30) nor more than sixty (60) days later, or as soon thereafter as the matter may be reached on the court's calendar, and may suggest to the parties that they seek counseling. The court at the request of either party shall, or on its own motion may, order a conciliation conference. At the adjourned hearing the court shall make a finding whether the marriage is irretrievably broken.

(3) A finding of irretrievable breakdown is a determination that there is no reasonable prospect of reconciliation.

(4) Nothing in this section shall be interpreted to affect the provisions of sections 36-201 through 36-205, known as the Montana Conciliation Law.

History: En. 48-319 by Sec. 19, Ch. 536, L. 1975.

48-320. Separation agreement. (1) To promote amicable settlement of disputes between parties to a marriage attendant upon their separation or the dissolution of their marriage, the parties may enter into a written separation agreement containing provisions for disposition of any property owned by either of them, maintenance of either of them, and support, custody, and visitation of their children.

(2) In a proceeding for dissolution of marriage or for legal separation, the terms of the separation agreement, except those providing for the support, custody, and visitation of children, are binding upon the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties, on their own motion or on request of the court, that the separation agreement is unconscionable.

(3) If the court finds the separation agreement unconscionable, it may request the parties to submit a revised separation agreement or may make orders for the disposition of property, maintenance, and support.

(4) If the court finds that the separation agreement is not unconscionable as to disposition of property or maintenance, and not unsatisfactory as to support:

(a) unless the separation agreement provides to the contrary, its terms shall be set forth in the decree of dissolution or legal separation and the parties shall be ordered to perform them, or

(b) if the separation agreement provides that its terms shall not be set forth in the decree, the decree shall identify the separation agreement and state that the court has found the terms not unconscionable.

(5) Terms of the agreement set forth in the decree are enforceable by all remedies available for enforcement of a judgment, including contempt, and are enforceable as contract terms.

(6) Except for terms concerning the support, custody, or visitation of children, the decree may expressly preclude or limit modification of terms set forth in the decree if the separation agreement so provides. Otherwise, terms of a separation agreement set forth in the decree are automatically modified by modification of the decree.

History: En. 48-320 by Sec. 20, Ch. 536, L. 1975.

48-321. Disposition of property. (1) In a proceeding for dissolution of a marriage, legal separation, or disposition of property following a decree of dissolution of marriage or legal separation by a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property, the court, without regard to marital misconduct, shall, and in a proceeding for legal separation may, finally equitably apportion between the parties the property and assets belonging to either or both however and whenever acquired, and whether the title thereto is in the name of the husband or wife or both. In making apportionment the court shall consider the duration of the marriage, and prior marriage of either party, antenuptial agreement of the parties, the age, health, station, occupation, amount and sources of income, vocational skills, employ-

ability, estate, liabilities, and needs of each of the parties, custodial provisions, whether the apportionment is in lieu of or in addition to maintenance, and the opportunity of each for future acquisition of capital assets and income. The court shall also consider the contribution or dissipation of value of the respective estates, and the contribution of a spouse as a homemaker or to the family unit. In disposing of property acquired prior to the marriage; property acquired by gift, bequest, devise or descent; property acquired in exchange for property acquired before the marriage or in exchange for property acquired by gift, bequest, devise, or descent; the increased value of property acquired prior to marriage; and property acquired by a spouse after a decree of legal separation, the court shall consider those contributions of the other spouse to the marriage, including the nonmonetary contribution of a homemaker; the extent to which such contributions have facilitated the maintenance of this property and whether or not the property disposition serves as an alternative to maintenance arrangements.

(2) In a proceeding, the court may protect and promote the best interests of the children by setting aside a portion of the jointly and separately held estates of the parties in a separate fund or trust for the support, maintenance, education, and general welfare of any minor, dependent, or incompetent children of the parties.

History: En. 48-321 by Sec. 21, Ch. 536, L. 1975.

DECISIONS UNDER FORMER LAW

Orders as to Property

Equal division of the property accumulated during the marriage was not unreasonable and was within the court's power even though the husband had made greater contributions during the marriage and most of the property was held in his name. *Cook v. Cook*, 159 M 98, 495 P 2d 591.

There must be a complete disclosure by both parties of the total value of their assets and resources in order for the court to make an equitable division of property, and testimony of wife which was vague and confusing and conflicting regarding the family money and business accounts, was not sufficient basis for the court's unequal division of property. *Fautsch v. Fautsch*, — M —, 530 P 2d 1172.

Property Division

Property division could not be decreed in same suit in which husband was denied divorce and wife was granted separate maintenance. *Stapleton v. Stapleton*, 158 M 96, 488 P 2d 1144, following *Decker*

v. Decker, 56 M 338, 185 P 168 and *Boggs v. Boggs*, 119 M 540, 545, 177 P 2d 869, 872.

Vague and confusing testimony as to bank balances, values of real property, and health of wife were insufficient evidence to support an unequal division of property, where divorce was granted to both parties. *Fautsch v. Fautsch*, — M —, 530 P 2d 1172.

Where husband was financially unable to contribute to the support of the minor children, the wife was properly granted a proportionately larger share of the marital property to offset her increased obligation. *Perkins v. Perkins*, — M —, 540 P 2d 957.

Sale of Farm

Order of the court that the farm be sold and the proceeds divided was not abuse of discretion since the entire investment was in jeopardy because of delinquent taxes and mortgage, and since it would have been difficult for one person to manage the farm. *Turville v. Turville*, — M —, 533 P 2d 962.

48-322. Maintenance. (1) In a proceeding for dissolution of marriage or legal separation, or a proceeding for maintenance following dissolution of the marriage by a court which lacked personal jurisdiction

over the absent spouse, the court may grant a maintenance order for either spouse only if it finds that the spouse seeking maintenance:

(a) lacks sufficient property to provide for his reasonable needs, and
 (b) is unable to support himself through appropriate employment or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.

(2) The maintenance order shall be in such amounts and for such periods of time as the court deems just, without regard to marital misconduct, and after considering all relevant facts including:

(a) the financial resources of the party seeking maintenance, including marital property apportioned to him, and his ability to meet his needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party as custodian;

(b) the time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment;

(c) the standard of living established during the marriage;

(d) the duration of the marriage;

(e) the age, and the physical and emotional condition of the spouse seeking maintenance; and

(f) the ability of the spouse from whom maintenance is sought to meet his needs while meeting those of the spouse seeking maintenance.

History: En. 48-322 by Sec. 22, Ch. 536, L. 1975.

DECISIONS UNDER FORMER LAW

Alimony—Erroneous Denial

Trial court erred in denying wife alimony settlement where denial of alimony resulted in leaving the wife at large in the community without means of support due to her lack of marketable skills and physical disabilities; trial court's finding that wife should leave the marriage with nothing because she had brought no assets into the marriage was incorrect where for fourteen years wife had contributed to the marriage by helping on the family farm, by aiding the husband in the building of an addition to the farm home, and by the performance of domestic duties. *Stenberg v. Stenberg*, — M —, 505 P 2d 110.

Character of Award

Where wife accepted alimony in lieu of distribution of other property, alimony provision of property settlement agreement as incorporated in divorce decree was intended to act as inseverable contractual provision, and could not be stricken from decree, despite claimed unconstitutionality of alimony statute. *Taylor v. Taylor*, — M —, 537 P 2d 483.

Divorce Granted to Husband

Although divorce was granted to hus-

band, where district court had made finding that both parties were entitled to a divorce, the court had jurisdiction to make alimony award for wife, and also had jurisdiction to increase award. *Clontz v. Clontz*, — M —, 531 P 2d 1003.

Estoppel from Terminating Alimony

Where divorce had been granted to the husband but both parties were at fault, court had jurisdiction to make award of alimony to wife; and since husband had accepted the benefits of the divorce he was estopped from seeking relief from its burdens, which had been agreed to by him in writing at the time of the divorce. *Clontz v. Clontz*, — M —, 531 P 2d 1003.

Where husband had taken affirmative action to enforce the provisions of the divorce decree, he was estopped to challenge the validity of the award of "alimony" to his former wife. *Englund v. Englund*, — M —, 547 P 2d 841.

Survival of Support Obligation

District court may make support obligation a continuing one that survives the father's death and is enforceable against his estate. *Horning v. Estate of Lagerquist*, 155 M 412, 473 P 2d 541.

48-323. Child support. In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court may order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for his support, without regard to marital misconduct, after considering all relevant factors including:

- (1) the financial resources of the child;
- (2) the financial resources of the custodial parent;
- (3) the standard of living the child would have enjoyed had the marriage not been dissolved;
- (4) the physical and emotional condition of the child, and his educational needs; and
- (5) the financial resources and needs of the noncustodial parent.

History: En. 48-323 by Sec. 23, Ch. 536, L. 1975.

DECISIONS UNDER FORMER LAW

Financial Protection

The main purpose of the divorce decree is the financial protection of the wife and children, and the husband who, pursuant to informal agreement of the parties, had made regular mortgage payments instead of child-support payments, had satisfactorily achieved the objective of the decree; although half of each mortgage payment accrued to the benefit of the husband, wife's increased equity in the house had amounted to more total support than the decreed child-support payments. *Haaby v. Haaby*, — M —, 529 P 2d 1387.

Liability for Support

Husband was not liable for both child-support payments and mortgage payments under a divorce decree in which mortgage payments had been premised upon immediate sale of the homestead, but pursuant to an informal agreement of the parties the homestead had not been sold and the husband had made mortgage payments for five years instead of child-support payments. *Haaby v. Haaby*, — M —, 529 P 2d 1387.

48-324. Representation of child. The court may appoint an attorney to represent the interests of a minor dependent child with respect to his support, custody, and visitation. The court shall enter an order for costs and fees in favor of the child's attorney. The order shall be made against either or both parents, except that, if the responsible party is indigent, the costs shall be waived.

History: En. 48-324 by Sec. 24, Ch. 536, L. 1975.

48-325. Payment of maintenance or support to court. (1) Upon its own motion or upon motion of either party, the court may order at any time that maintenance or support payments be made to the clerk of the district court as trustee for remittance to the person entitled to receive the payments.

(2) The clerk of the district court shall maintain records listing the amount of payments, the date payments are required to be made, and the names and addresses of the parties affected by the order.

(3) The parties affected by the order shall inform the clerk of the district court of any change of address or of other condition that may affect the administration of the order.

History: En. 48-325 by Sec. 25, Ch. 536, L. 1975.

48-326. Assignments. The court may order the person obligated to pay support or maintenance to make an assignment of a part of his periodic earnings or trust income to the person entitled to receive the payments. The assignment is binding on the employer, trustee, or other payor of the funds two (2) weeks after service upon him of notice that it has been made. The payor shall withhold from the earnings or trust income payable to the person obligated to support the amount specified in the assignment and shall transmit the payments to the person specified in the order. The payor may deduct from each payment a sum not exceeding one dollar (\$1) as reimbursement for costs. An employer shall not discharge or otherwise discipline an employee as a result of a wage or salary assignment authorized by this section.

History: En. 48-326 by Sec. 26, Ch. 536, L. 1975.

48-327. Costs—Attorney's fees. The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this act and for attorney's fees, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or after entry of judgment. The court may order that the amount be paid directly to the attorney, who may enforce the order in his name.

History: En. 48-327 by Sec. 27, Ch. 536, L. 1975.

DECISIONS UNDER FORMER LAW

Showing of Necessity

Showing of necessity is condition precedent to exercise of court's discretion to grant attorney's fees; provision in decree awarding defendant wife attorney's fees

was stricken where defendant failed to show necessity of award and assets of the marriage were several hundred thousand dollars. *Whitman v. Whitman*, — M —, 519 P 2d 966.

48-328. Decree. (1) A decree of dissolution of marriage or of legal separation is final when entered, subject to the right of appeal. An appeal from the decree of dissolution that does not challenge the finding that the marriage is irretrievably broken does not delay the finality of that provision of the decree which dissolves the marriage beyond the time for appealing from that provision, and either of the parties may remarry pending appeal.

(2) No earlier than six (6) months after entry of a decree of legal separation, the court on motion of either party shall convert the decree to a decree of dissolution of marriage.

(3) The clerk of court shall give notice of the entry of a decree of dissolution or legal separation:

(a) if the marriage is registered in this state, to the clerk of the district court of the county where the marriage is registered who shall enter the fact of dissolution or separation in the book in which the marriage license and certificate are recorded; or

(b) if the marriage is registered in another jurisdiction, to the ap-

appropriate official of that jurisdiction, with the request that he enter the fact of dissolution in the appropriate record.

(4) Upon request by a wife whose marriage is dissolved or declared invalid, the court shall order her maiden name or a former name restored.

History: En. 48-328 by Sec. 28, Ch. 536, L. 1975; amd. Sec. 1, Ch. 174, L. 1977.

Amendments

The 1977 amendment deleted "may, and

if there are no children of the parties" before "shall order her maiden name or a former name restored" in subsection (4).

48-329. Independence of provisions of decree or temporary order. If a party fails to comply with a provision of a decree or temporary order or injunction, the obligation of the other party to make payments for support or maintenance or to permit visitation is not suspended; but he may move the court to grant an appropriate order.

History: En. 48-329 by Sec. 29, Ch. 536, L. 1975.

48-330. Modification and termination of provisions for maintenance, support, and property disposition. (1) Except as otherwise provided in subsection (6) of section 48-320, the provisions of any decree respecting maintenance or support may be modified by a court only as to installments accruing subsequent to the motion for modification and either:

(a) upon a showing of changed circumstances so substantial and continuing as to make the terms unconscionable; or

(b) upon written consent of the parties. The provisions as to property disposition may not be revoked or modified by a court, except:

(i) upon written consent of the parties, or

(ii) if the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state.

(2) Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance.

(3) Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child but not by the death of a parent obligated to support the child. When a parent obligated to pay support dies, the amount of support may be modified, revoked, or commuted to a lump-sum payment, to the extent just and appropriate in the circumstances.

History: En. 48-330 by Sec. 30, Ch. 536, L. 1975.

DECISIONS UNDER FORMER LAW

Alimony—Modification of Decree

Trial court acted properly in ordering husband, who had stopped paying alimony because of alleged changes in financial standing, to pay back alimony in full, since under former statute modification of alimony applied only to future installments. *Porter v. Porter*, 155 M 451, 473 P 2d 538.

Estoppel to Challenge Decree

Where husband had taken affirmative action to enforce the provisions of the divorce decree, he was estopped to challenge the validity of the award of "alimony" to his former wife. *Englund v. Englund*, — M —, 547 P 2d 841.

Joint Tenancy Property

Pursuant to M. R. Civ. P., Rules 18(a)

and 54(c), it was proper for divorce court to divest wife of her interest in joint tenancy property and provide for payment of alimony in lieu thereof. *Libra v. Libra*, 157 M 252, 484 P 2d 748, overruling *Emery v. Emery*, 122 M 201, 200 P 2d 251 and affirming rule of *Johnson v. Johnson*, 137 M 11, 349 P 2d 310.

Modification of Amount of Award

District court was free to modify original decree to provide for child-support payments which were lower than those set forth in separation agreement. *Gessell v. Jones*, 149 M 418, 427 P 2d 295.

Although there was no abuse of discretion in the original award of \$500 per month alimony and child support, where husband's later earnings made it impossible for him to pay such amount, court properly reduced award to \$250 a month. *Grant v. Grant*, — M —, 531 P 2d 1007.

Modification of Decree for Support

Under former section court of sister state entering valid custody order retained continuing jurisdiction to modify such award after party changed domicile to this state since change in child's domicile did not, in itself, deprive court of sister state of its jurisdiction; courts of either state could possess jurisdiction resulting in concurrent jurisdiction of matter.

Corkill v. Cloninger, 153 M 142, 454 P 2d 911.

Property Settlement Agreement

Trial court erred in modifying and setting aside "alimony" of property settlement agreement incorporated in divorce decree where wife agreed to assume \$10,000 of husband's liability and release her interest in all jointly held property in return for receipt of 51% of jointly held corporation and payment of \$750 per month for nine years, which payments were to continue if the wife remarried and were to be a charge upon the husband's estate if he died before full payment was made; the monthly payments were not "alimony" but were a part of the property settlement agreement which could not be modified or severed from the divorce decree without destroying the contract. *Washington v. Washington*, 162 M 349, 512 P 2d 1300, distinguished in 163 M 463, 517 P 2d 884; — M —, 544 P 2d 1231.

Retroactive Modification of Alimony Payments

Former statute was sufficiently broad to permit court to order modification of alimony payments effective as of date of application therefor as opposed to date of order. *Movius v. Movius*, — M —, 517 P 2d 884.

48-331. Jurisdiction—commencement of proceedings. (1) A court of this state competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if:

(a) this state:

(i) is the home state of the child at the time of commencement of the proceedings; or

(ii) had been the child's home state within 6 months before commencement of the proceeding and the child is absent from this state because of his removal or retention by a person claiming his custody or for other reason, and a parent or person acting as parent continues to live in this state; or

(b) it is in the best interest of the child that a court of this state assume jurisdiction because:

(i) the child and his parents or the child and at least one contestant have a significant connection with this state; and

(ii) there is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships; or

(c) the child is physically present in this state and:

(i) has been abandoned; or

(ii) it is necessary in an emergency to protect him because he has

been subjected to or threatened with mistreatment or abuse or is neglected or dependent; or

(d) (i) no other state has jurisdiction under prerequisites substantially in accordance with subsections (1)(a), (1)(b), or (1)(c) of this section or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine custody of the child; and

(ii) it is in his best interest that the court assume jurisdiction.

(2) Except under subsections (1)(c) and (1)(d) of this section, physical presence in this state of the child or of the child and one of the contestants is not alone sufficient to confer jurisdiction on a court of this state to make a child custody determination.

(3) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his custody.

(4) A child custody proceeding is commenced in the district court:

(a) by a parent, by filing a petition:

(i) for dissolution or legal separation; or

(ii) for custody of the child in the county in which he is permanently resident or found; or

(b) by a person other than a parent, by filing a petition for custody of the child in the county in which he is permanently resident or found, but only if he is not in the physical custody of one of his parents.

(5) Notice of a child custody proceeding shall be given to the child's parent, guardian, custodian, those persons having physical custody of the child, and all other contestants, who may appear, be heard, and file a responsive pleading. The court, upon a showing of good cause, may permit intervention of other interested parties.

History: En. 48-331 by Sec. 31, Ch. 536, L. 1975; amd. Sec. 11, Ch. 33, L. 1977; amd. Sec. 27, Ch. 537, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 33 and once by Ch. 537. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 33, Laws of 1977, made minor changes in phraseology, punctuation and style.

Chapter 537, Laws of 1977, inserted "those persons having physical custody of the child, and all other contestants" in the first sentence of subsection (5); and made a minor change in phraseology.

Separability Clause

Section 28 of Ch. 537, Laws 1977 read "If a part of this act is invalid, all valid

parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Modification of Foreign Custody Decree

Where the mother and legal custodian of children brought by their father from Washington into Montana without her authorization was not subject to the long-arm jurisdiction of the Montana court under M. R. Civ. P., Rule 4(B), any modification of the custody decree entered by the Washington court would not be entitled to full faith and credit, and therefore, since contempt proceedings for violation of the original decree were pending against the father in Washington, it was up to the courts of that state to make any modification of that decree. *State ex rel. Muirhead v. District Court*, — M —, 550 P 2d 1304.

48-332. Best interest of child. The court shall determine custody in accordance with the best interest of the child. The court shall consider all relevant factors including:

- (1) the wishes of the child's parent or parents as to his custody;
- (2) the wishes of the child as to his custodian;
- (3) the interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child's best interest;
- (4) the child's adjustment to his home, school, and community; and
- (5) the mental and physical health of all individuals involved.

History: En. 48-332 by Sec. 32, Ch. 536, L. 1975.

DECISIONS UNDER FORMER LAW

Award to Father

District court did not abuse its discretion in awarding custody of two younger children to father who had moved to California, since children had a good home with their father and paternal grandparents, were well cared for and happy, were given more than adequate educational and religious training and had lived with their father for more than five years. *Anderson v. Anderson*, 145 M 244, 400 P 2d 632.

Although twelve-year-old daughter expressed desire to live with her mother, custody was properly awarded to father where evidence showed emotional instability on part of mother which she evinced by communicating her morbid suspicion of improper conduct by father. *Libra v. Libra*, 157 M 252, 458 P 2d 748.

Award to father was supported by evidence that he spent considerable amounts of time with the boys and entered into activities with them, whereas mother had made no attempt to see children for a year, and had not written or sent birthday gifts. *Haywood v. Sedillo*, — M —, 535 P 2d 1014.

Emotional Problem of Child

It was in the best interests of child of tender years, who had been in the physical custody of her father by agreement of the parents because of the child's emotional problem, to change the legal custody to the father. *Gilbert v. Gilbert*, — M —, 533 P 2d 1079.

Fitness of Parents

In contested custody cases, the court should determine the fitness of both parents, and it was error for the court to determine only the fitness of the father without making any finding as to the fitness of the mother, especially where the court was considering children of tender years. *Love v. Love*, — M —, 533 P 2d 280.

Mother Preferred

In absence of any evidence disputing the fitness of the mother it was an abuse of discretion to separate children of tender years from mother and exemplary older brother by awarding custody to father who had refused to make any effort to support his children of previous marriages. *Love v. Love*, — M —, 533 P 2d 280.

48-333. Temporary orders. (1) A party to a custody proceeding may move for a temporary custody order. The motion must be supported by an affidavit as provided in 48-340. The court may award temporary custody under the standards of 48-332 after a hearing or, if there is no objection, solely on the basis of the affidavits.

(2) If a proceeding for dissolution of marriage or legal separation is dismissed, any temporary custody order is vacated unless a parent or the child's custodian moves that the proceeding continue as a custody proceeding and the court finds, after a hearing, that the circumstances of the parents and the best interest of the child require that a custody decree be issued.

(3) If a custody proceeding commenced in the absence of a petition for dissolution of marriage or legal separation is dismissed, any temporary custody order is vacated.

History: En. 48-333 by Sec. 33, Ch. 536, L. 1975; amd. Sec. 12, Ch. 33, L. 1977. subsection (a)(ii) or (b) of section 48-331" after "legal separation" in subsection (3); and made minor changes in phraseology, punctuation and style.

Amendments

The 1977 amendment deleted "under

48-334. Interviews. (1) The court may interview the child in chambers to ascertain the child's wishes as to his custodian and as to visitation. The court may permit counsel to be present at the interview. The court shall cause a record of the interview to be made and to be part of the record in the case.

(2) The court may seek the advice of professional personnel, whether or not employed by the court on a regular basis. The advice given shall be in writing and made available by the court to counsel upon request. Counsel may examine as a witness any professional personnel consulted by the court.

History: En. 48-334 by Sec. 34, Ch. 536, L. 1975.

48-335. Investigations and reports. (1) In contested custody proceedings, and in other custody proceedings if a parent or the child's custodian so requests, the court may order an investigation and report concerning custodial arrangements for the child. The investigation and report may be made by the county welfare department.

(2) In preparing his report concerning a child, the investigator may consult any person who may have information about the child and his potential custodial arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's custodian; but the child's consent must be obtained if he has reached the age of sixteen (16) unless the court finds that he lacks mental capacity to consent. If the requirements of subsection (3) are fulfilled, the investigator's report may be received in evidence at the hearing.

(3) The court shall mail the investigator's report to counsel and to any party not represented by counsel at least ten (10) days prior to the hearing. The investigator shall make available to counsel and to any party not represented by counsel the investigator's file of underlying data, and reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection (2), and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call the investigator and any person whom he has consulted for cross-examination. A party may not waive his right of cross-examination prior to the hearing.

History: En. 48-335 by Sec. 35, Ch. 536, L. 1975.

48-336. Hearings. (1) Custody proceedings shall receive priority in being set for hearing.

(2) The court may tax as costs the payment of necessary travel and other expenses incurred by any person whose presence at the hearing the court deems necessary to determine the best interest of the child.

(3) The court without a jury shall determine questions of law and fact. If it finds that a public hearing may be detrimental to the child's best interest, the court may exclude the public from a custody hearing, but may admit any person who has a direct and legitimate interest in the particular case or a legitimate educational or research interest in the work of the court.

(4) If the court finds it necessary to protect the child's welfare that the record of any interview, report, investigation, or testimony in a custody proceeding be kept secret, the court may make an appropriate order sealing the record.

History: En. 48-336 by Sec. 36, Ch. 536, L. 1975.

48-337. Visitation. (1) A parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral, or emotional health.

(2) The court may modify an order granting or denying visitation rights whenever modification would serve the best interest of the child; but the court shall not restrict a parent's visitation rights unless it finds that the visitation would endanger seriously the child's physical, mental, moral, or emotional health.

History: En. 48-337 by Sec. 37, Ch. 536, L. 1975.

48-338. Judicial supervision. (1) Except as otherwise agreed by the parties in writing at the time of the custody decree, the custodian may determine the child's upbringing, including his education, health care, and religious training, unless the court after hearing, finds, upon motion by the noncustodial parent, that in the absence of a specific limitation of the custodian's authority, the child's physical health would be endangered or his emotional development significantly impaired.

(2) If both parents or all contestants agree to the order, or if the court finds that in the absence of the order the child's physical health would be endangered or his emotional development significantly impaired, the court may order the county welfare department to exercise continuing supervision over the case to assure that the custodial or visitation terms of the decree are carried out.

History: En. 48-338 by Sec. 38, Ch. 536, L. 1975.

Continuing Jurisdiction of the Court

Under the Uniform Marriage and Di-

vorced Act, as under prior law, the court's jurisdiction in matters of custody is continuing. *Foss v. Leifer*, — M —, 550 P 2d 1309; *Erhardt v. Erhardt*, — M —, 554 P 2d 758.

48-339. Modification. (1) No motion to modify a custody decree may be made earlier than two (2) years after its date, unless the court permits it to be made on the basis of affidavits that there is reason to

believe the child's present environment may endanger seriously his physical, mental, moral, or emotional health.

(2) The court shall not modify a prior custody decree unless it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of entry of the prior decree, that a change has occurred in the circumstances of the child or his custodian, and that the modification is necessary to serve the best interest of the child. In applying these standards the court shall retain the custodian appointed pursuant to the prior decree unless:

(a) the custodian agrees to the modification;

(b) the child has been integrated into the family of the petitioner with consent of the custodian; or

(c) the child's present environment endangers seriously his physical, mental, moral, or emotional health, and the harm likely to be caused by a change of environment is outweighed by its advantages to him.

(3) Attorney fees and costs shall be assessed against a party seeking modification if the court finds that the modification action is vexatious and constitutes harassment.

History: En. 48-339 by Sec. 39, Ch. 536, L. 1975.

DECISIONS UNDER FORMER LAW

Admission of Evidence

In an action for change of custody, the court was not justified in admitting testimony relating back to and prior to the time of the divorce, where the mother had signed a separation, custody, and property agreement, and there was no evidence of fraud in the record. *Svennungsen v. Svennungsen*, — M —, 527 P 2d 640.

Change of Circumstances

Evidence the mother had, since time of divorce, remarried, overcome previous emotional difficulties, and quit her job in order to provide for time and attention needed to raise child, supported modification of divorce decree, in best interest of child, so as to grant custody to mother. *McCullough v. McCullough*, 159 M 419, 498 P 2d 1189, distinguished in — M —, 530 P 2d 482.

Finding of a change in circumstances is a prerequisite to modification of custody, whether the custody was granted after a full adversary proceeding or after a default divorce. The reason for this requirement is to protect the person who has custody from the harassment of further litigation. *Svennungsen v. Svennungsen*, — M —, 527 P 2d 640.

Remarriage of custodial parent is not a sufficient change of circumstance to require change of custody without evidence that this remarriage was detrimental to the welfare of the child. *Svennungsen v.*

Svennungsen, — M —, 527 P 2d 640.

Mother's restored mental health and remarriage was not a change in the circumstances upon which the original custody award had been based; and all witnesses (including mother), having agreed that the father was a fit parent and that the children were well cared for, change in custody was denied. *Gilmore v. Gilmore*, — M —, 530 P 2d 480.

The phrase "change in circumstances" as used in this section with respect to modifications of custody orders is a term of art meaning circumstances changed so substantially that the best interests and general welfare of the child can best be promoted by alteration of the decree. *Foss v. Leifer*, — M —, 550 P 2d 1309.

The fact that the mother and custodian of the child in question permitted her paramour to take up residence in her home for a short time before their marriage did not constitute a "change in circumstances" sufficient to support a modification of the custody decree when it did not appear that this conduct caused any "moral decline" in the home, or in any way affected the physical, mental or emotional well-being of the child. *Foss v. Leifer*, — M —, 550 P 2d 1309.

Grounds for Modification

A district court may not exercise its discretionary power to modify a custody decree unless (1) new facts or facts unknown to the court at the time of the

original decree demonstrate that a change has occurred in the circumstances of the child or his custodian, and (2) such change is sufficient to warrant modification of the decree in order to promote the child's best interests. *Foss v. Leifer*, — M —, 550 P 2d 1309; *Erhardt v. Erhardt*, — M —, 554 P 2d 758.

Justifiable Grounds

If the court, in an uncontested divorce hearing, has made any award or adjudication of custody, the issue of custody has been heard and may not be changed without a showing of justifiable grounds. *Svennungsen v. Svennungsen*, — M —, 527 P 2d 640.

Notice

It was improper to terminate custody at a hearing on contempt for nonsupport when respondent had not been given notice that custody would be at issue. *State ex rel. Shelhamer v. District Court*, 159 M 11, 494 P 2d 928.

Unfitness of Custodial Parent

In proceeding for change of custody, a showing of unfitness of the custodial parent may be substituted for a change of circumstances, but will not be required in addition a showing of change of circumstances. *Svennungsen v. Svennungsen*, — M —, 527 P 2d 640.

48-340. Affidavit practice. A party seeking a temporary custody order or modification of a custody decree shall submit together with his moving papers an affidavit setting forth facts supporting the requested order or modification and shall give notice, together with a copy of his affidavit, to other parties to the proceeding, who may file opposing affidavits. The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the affidavits, in which case it shall set a date for hearing on an order to show cause why the requested order or modification should not be granted.

History: En. 48-340 by Sec. 40, Ch. 536, L. 1975.

48-341. Application. (1) This act applies to all proceedings commenced on or after its effective date.

(2) This act applies to all pending actions and proceedings commenced prior to its effective date with respect to issues on which a judgment has not been entered. Pending actions for divorce or separation are deemed to have been commenced on the basis of irretrievable breakdown. Evidence adduced after the effective date of this act shall be in compliance with this act.

(3) This act applies to all proceedings commenced after its effective date for the modification of a judgment or order entered prior to the effective date of this act.

(4) In any action or proceeding in which an appeal was pending or a new trial was ordered prior to the effective date of this act, the law in effect at the time of the order sustaining the appeal or the new trial governs the appeal, the new trial, and any subsequent trial or appeal.

History: En. 48-341 by Sec. 41, Ch. 536, L. 1975.

Compiler's Notes

Section 42 of Ch. 536, Laws 1975 read "If any provision of this act is in conflict with any other law of this state, or any rule or regulation promulgated thereunder, this act shall govern and control, and such other law, rule, or regulation shall be deemed superseded for the purpose of this act."

Separability Clause

Section 43 of Ch. 536, Laws 1975 read "If any provision of this act or application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of the act are severable."

TITLE 49—MAXIMS OF JURISPRUDENCE

CHAPTER 1—MAXIMS OF JURISPRUDENCE

49-102. (8739) When the reason of a rule ceases, so should the rule itself.

Change in Trial Judges

Rule that appellate court will not ordinarily disturb findings of fact of trial court where there is conflict in evidence is not

applicable where deciding judge was not judge who heard testimony. *Kostbade v. Metier*, 150 M 139, 432 P 2d 382.

49-103. (8740) Where the reason is the same, the rule should be the same.

References

Duffy v. Lipsman-Fulkerson & Co., 200 F Supp 71, 74.

49-104. (8741) One must not change his purpose to the injury of another.

References

Thisted v. Tower Management Corp., 147 M 1, 409 P 2d 813.

49-105. (8742) Any one may waive the advantage of a law intended solely for his benefit. But a law established for a public reason cannot be contravened by a private agreement.

Release Void as Contrary to Public Policy.

This section together with sections 58-607 and 13-801 (2) were broad enough to render illegal any exculpatory clause or release relieving a potential tortfeasor from all liability for future negligent conduct where such clause or release was contrary to public policy or against the public interest; release relieving county fair board from any liability to livestock

while on fairgrounds was illegal and unenforceable as contrary to public policy and against public interest and precluded county from disclaiming liability in negligence action for exhibitor's horses killed in barn fire on county fairgrounds; suppression of release in exhibitor's negligence action was not error or ground for new trial. *Haynes v. County of Missoula*, 163 M 270, 517 P 2d 370, 69 ALR 3d 1008.

49-106. (8743) One must so use his own rights as not to infringe upon the rights of another.

References

State Highway Commission v. Biastoch Meats, Inc., 145 M 261, 400 P 2d 274;

Thisted v. Tower Management Corp., 147 M 1, 409 P 2d 813.

49-108. (8745) Acquiescence in error takes away the right of objecting to it.

References

Brannon v. Lewis and Clark County, 143 M 200, 387 P 2d 706.

49-109. (8746) No one can take advantage of his own wrong.**Loss of Right of Survivorship**

Where husband feloniously killed his wife, he did not acquire by right of survivorship her share of property held jointly with him, but took the property under a constructive trust, and when he thereafter committed suicide his heirs had no right to wife's share. *In re Cox' Estate*, 141 M 583, 380 P 2d 584.

Wife who feloniously killed her husband did not acquire by right of survivorship his share of property held jointly with her, but took the property under a constructive trust. *Sikora v. Sikora*, 160 M 27, 499 P 2d 808.

Surety's Liability

This statute was one ground for holding surety liable on bond, even though bond was not in effect at time act occurred giving rise to liability, since surety company had been tardy in processing papers of party to be bonded and had accepted premium on bond. *Lapke v. Hunt*, 151 M 450, 443 P 2d 493.

References

Cited in *Doull v. Wohlschlager*, 141 M 354, 377 P 2d 758, 765; *Brannon v. Lewis and Clark County*, 143 M 200, 387 P 2d 706; *Thisted v. Tower Management Corp.*, 147 M 1, 409 P 2d 813.

49-113. (8750) He who takes the benefit must bear the burden.**Competency of Executioner**

One who received benefit from trustee's termination of trust could not, at a later proceeding, deny trustees competence to execute termination of trust in order to prove incompetency of the same person to execute a will, which will the beneficiary was attempting to avoid. *In re Estate of Powers*, — M —, 515 P 2d 368.

Surety's Liability

This statute was one ground for holding surety liable on bond, even though bond was not in effect at time act occurred giving rise to liability, since surety company had been tardy in processing papers of party to be bonded and had accepted premium on bond. *Lapke v. Hunt*, 151 M 450, 443 P 2d 493.

49-114. (8751) One who grants a thing is presumed to grant also whatever is essential to its use.**References**

Thisted v. Country Club Tower Corp., 146 M 87, 405 P 2d 432.

49-115. (8752) For every wrong there is a remedy.**References**

Thisted v. Tower Management Corp., 147 M 1, 409 P 2d 813.

49-119. (8756) The law helps the vigilant, before those who sleep on their rights.**References**

Brannon v. Lewis and Clark County, 143 M 200, 387 P 2d 706.

49-121. (8758) That which ought to have been done is to be regarded as done, in favor of him to whom, and against him from whom, performance is due.**References**

Thisted v. Country Club Tower Corp., 146 M 87, 405 P 2d 432; *Thisted v.*

Tower Management Corp., 147 M 1, 409 P 2d 813.

49-124. (8761) The law neither does nor requires idle acts.**Contract of Purchase**

Where purchaser conditioned annual payment on performance of certain acts

by vendor contained in contract, and subsequently brought suit for breach of contract when vendor did not perform such

acts, trial court properly entered judgment for vendor on evidence that purchaser, prior to payment, was going to insist on performance by vendor of other acts not contained in contract, since per-

formance of acts specified in contract would have been idle and under this section law does not require performance of idle acts. *Quayle v. Counts*, 155 M 57, 466 P 2d 911.

49-135. (8772) Where one of two innocent persons must suffer by the act of a third, he, by whose negligence it happened, must be the sufferer.

Contract of Sale

In vendor's action against subsequent bona fide purchaser to determine ownership and right to possession of an airplane, vendor was estopped to challenge sale by vendee by failing to record title document to avoid transfer tax, making no inquiry for a number of months about the plane, which he allowed vendee to have, even though the payments were due under the contract, and failing to make a diligent effort to recover the plane after

the payments became due. *Lakes v. Orley*, 148 M 325, 420 P 2d 151, 153.

Surety's Liability

This statute was one ground for holding surety liable on bond, even though bond was not in effect at time act occurred giving rise to liability, since surety company had been tardy in processing papers of party to be bonded and had accepted the premium on bond. *Lapke v. Hunt*, 151 M 450, 443 P 2d 493.

TITLE 50—MINES AND MINING

- Chapter 1. Safety in mines other than coal mines, 50-101, 50-102, 50-108, 50-118, 50-119.
2. Sampling and assaying of ore, 50-202, 50-204, 50-205.
 3. Payment for consignments of ore—purchases from leased mines, 50-303 to 50-305.
 4. Regulation of coal mining industry—coal mining code, 50-401 to 50-405, 50-407, 50-412.1, 50-428 to 50-434.1, 50-467.1, 50-468, 50-476 to 50-482.
 6. Regulations for sale and marketing of coal, 50-604, 50-606.
 7. Location and record of mining and millsite claims, 50-701 to 50-702.1, 50-704, 50-714.
 8. Mining—rights of way, 50-805, 50-813, 50-815, 50-816.
 10. Strip and Underground Mine Reclamation Act, 50-1034 to 50-1048, 50-1050 to 50-1057.
 11. Dredge mining—preservation of lands, Repealed—Section 116, Chapter 428, Laws of 1973.
 12. Reclamation of mining lands, 50-1201 to 50-1216, 50-1219 to 50-1227.
 13. Notice to landowner of surface operations, 50-1301 to 50-1306.
 14. Strip mined coal conservation, 50-1401 to 50-1409.
 15. Open cut mining, 50-1501 to 50-1517.
 16. Strip and Underground Mine Siting Act, 50-1601 to 50-1617.
 17. Control of uranium solution extraction, 50-1701, 50-1702, 50-1704.
 18. Impact from coal development, 50-1801 to 50-1810.

CHAPTER 1—SAFETY IN MINES OTHER THAN COAL MINES

- Section 50-101. Inspectors of metal and nonmetallic mines—employment.
- 50-102. Inspections and investigations—access to mine—order to close mine or abate violation—notice—hearing and review.
- 50-108. To what mines act is applicable.
- 50-118. Violation of the act—penalties.
- 50-119. Definitions.

50-101. (3418) Inspectors of metal and nonmetallic mines—employment. The division of workers' compensation shall employ an adequate number of qualified metal and nonmetallic mine inspectors necessary for the enforcement of this act and shall prescribe their powers, duties and responsibilities.

History: En. Sec. 1, p. 109, L. 1897; re-en. Sec. 1711, Rev. C. 1907; amd. Sec. 1, Ch. 71, L. 1909; amd. Sec. 1, Ch. 22, L. 1921; re-en. Sec. 3418, R. C. M. 1921; amd. Sec. 1, Ch. 310, L. 1971; amd. Sec. 20, Ch. 182, L. 1975.

Amendments

The 1971 amendment rewrote this sec-

tion. For previous text, see parent volume.

The 1975 amendment substituted "division of workers' compensation" for "industrial accident board."

Cross-References

Industrial accident board abolished and functions transferred, sec. 82A-1005 (1).

50-102. (3419) Inspections and investigations—access to mine—order to close mine or abate violation—notice—hearing and review. (a) The division is authorized at any time to cause to be made such inspections and investigations as it shall deem necessary in surface and underground mines which are subject to this act (1) for the purpose of obtaining, utilizing, and disseminating information relating to health and safety conditions in such mines, the causes of accidents involving bodily injury or loss of life, or the causes of occupational diseases originating therein,

and (2) for the purpose of determining whether or not there is compliance with a health and safety standard or order issued under this act.

(b) For the purpose of making any inspection or investigation authorized by this act, authorized representatives of the division shall have the right of entry to, upon, or through any mine which is subject to this act.

(c) If, upon any inspection of a mine which is subject to this act authorized representatives of the division find that the conditions or practices in the mine are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated, such representatives shall determine the extent of the area of such mine throughout which the danger exists, and thereupon issue an order requiring the operator of such mine to cause all persons, except the persons designated below, whose presence in such area is necessary to eliminate the danger described in such order, to be withdrawn from, and to be debarred from entering such area:

(1) Any person whose presence in such area is necessary in the judgment of the operator of the mine, to eliminate the danger described in the order.

(2) Any public official whose official duties require him to enter such area.

(3) Any legal or technical consultant, or any representative of the employees of the mine, who is a person qualified to make mine examinations, or is accompanied by such a person, and whose presence in such area is necessary, in the judgment of the operator of the mine, for the proper investigation of the conditions described in the order.

(d) If, upon any such inspection or investigation, an authorized representative finds that there has been a failure to comply with a mandatory standard which is applicable to such mine, but that such failure to comply has not created a danger that could reasonably be expected to cause death or serious physical harm in such mine immediately or before the imminence of such danger can be eliminated, he shall find what would be a reasonable period of time within which such violation should be totally abated and thereupon issue a notice fixing a reasonable time for the abatement of the violation. If, upon the expiration of such period of time as originally fixed or extended, the authorized representative finds that such violation has not been totally abated, and if he also finds that such period of time should not be further extended, he shall also find the extent of the area which is affected by such violation; thereupon, the division shall make an order requiring the operator of such mine to cause all persons in such area, excepting the following persons whose presence in such area is necessary to abate the violation described in the order, to be withdrawn from, and to be debarred from entering such area:

(1) Any person whose presence in such area is necessary, in the judgment of the operator of the mine, to abate the violation described in the order.

(2) Any public official whose official duties require him to enter such area.

(3) Any legal or technical consultant, or any representative of the employees of the mine who is a person qualified to make examinations, or is accompanied by such a person, and whose presence in such area is necessary, in the judgment of the operator of the mine, for the proper investigation of the conditions described in the order.

(e) Findings and orders issued pursuant to this section shall contain a detailed description of the conditions or practices which cause and constitute a situation of imminent danger or a violation of a mandatory standard, and a description of the area of the mine throughout which persons must be withdrawn and debarred.

(f) Each finding made and notice or order issued under this section shall be given promptly to the operator of the mine to which it pertains by the person making such finding or order, and all such findings, orders, and notices shall be in writing, and shall be signed by the person making them. A notice or order issued by an authorized representative pursuant to this section may be annulled, canceled, or revised by the authorized representative, and in case of a division order, the division may annul, cancel or revise the order.

(g) The order of the duly authorized representative of the division shall remain in effect, but shall immediately be subject to review as provided in this act.

(h) An operator notified of an order made pursuant to section 50-102 (c) may apply to the division for a hearing, revision, or annulment of such order. Whenever the division after such a hearing upon complaint, or upon its own motion, finds that danger throughout the area of such mine as set out in such order existed at the time of making the inspection, it shall make an order denying a revision or annulment; but, if it finds that such danger did not exist throughout the area of such mine, it shall make an order consistent with its findings, revising or annulling the order under review.

(i) An operator notified of an order made pursuant to section 50-102 (d) may apply to the division for a hearing or revision of such order. If the division finds that there was no violation, it shall make an order annulling the order under review. If the division finds that there was such a violation, but such violation has since been abated, it shall make an order annulling the order under review. If the division finds that such violation was not totally abated, it shall make an order consistent with its findings.

(j) In view of the urgent need for prompt decisions of matters submitted to the division under section 50-102, all actions which the division or its authorized representatives are required to take under this section shall be taken as rapidly as practical, consistent with adequate consideration of the issues involved.

History: En. Sec. 1, Ch. 98, L. 1903; 3419, R. C. M. 1921; amd. Sec. 2, Ch. 310, re-en. Sec. 1713, Rev. C. 1907; re-en. Sec. L. 1971; amd. Sec. 21, Ch. 182, L. 1975.

Amendments

The 1971 amendment rewrote this section. For previous text, see parent volume.

The 1975 amendment substituted "division" for "board" throughout the section.

50-103 to 50-107. (3420 to 3424) Repealed.**Repeal**

Sections 50-103 to 50-107 (Sec. 588, Pol. C. 1895; Secs. 2 to 5, Ch. 98, L. 1903), relating to inspections and investigation of mine safety, were repealed by Sec. 6, Ch. 310, Laws 1971.

50-108. (3425) To what mines act is applicable. This act shall apply to all mines (except coal and lignite) and individuals, owners, lessors, lessees, agents, partnerships, corporations, managers, operators, or employers operating any surface or underground metal or nonmetallic mines in this state. These individuals, owners, lessors, lessees, agents, partnerships, corporations, managers, operators, or employers operating any surface or underground metal or nonmetallic mines (excluding coal and lignite) shall report the same to the division, state the name of the mine, the location of the same, the name of the company, person, or persons owning or operating the same, post-office address, and number of persons employed.

History: En. Sec. 6, Ch. 98, L. 1903; re-en. Sec. 1720, Rev. C. 1907; re-en. Sec. 3425, R. C. M. 1921; amd. Sec. 3, Ch. 310, L. 1971; amd. Sec. 22, Ch. 182, L. 1975.

portion of the section. For previous version, see parent volume.

The 1975 amendment substituted "division" for "board"; and substituted "persons" for "men" near the end of the section.

Amendments

The 1971 amendment rewrote the first

50-109 to 50-117. (3426 to 3434) Repealed.**Repeal**

Sections 50-109 to 50-117 (Sec. 590, Pol. C. 1895; Secs. 3650 to 3654, Pol. C. 1895; Secs. 1 to 3, Ch. 72, L. 1911), relating to safety and sanitary standards in mines and penalties for violations, were repealed by Sec. 6, Ch. 310, Laws 1971.

50-118. (3435) Violation of the act—penalties. (a) Whenever an operator (1) violates or fails or refuses to comply with any order, rule, or regulation issued under this act, or (2) interferes with, hinders, or delays the division or its authorized representatives in carrying out any duties under this act, or (3) refuses to admit an authorized representative of the division to any mine which is subject to this act, or (4) refuses to permit the inspection or investigation of any mine which is subject to this act, or an accident, injury, or occupational disease occurring in or connected with such a mine, or (5) refuses to furnish the division any information or report requested by the division and which may reasonably be necessary to carry out the provisions of this act, a civil action for preventive relief, including, but not limited to, an application for a permanent or temporary injunction, restraining order, or other order, may be instituted by the division in the district court for the county in which the mine in question is located or in which the mine operator has its principal office.

(b) Any person who knowingly (1) violates or fails or refuses to comply with any order, rule, or regulation issued under this act, or (2)

interferes with, hinders, or delays the division or its authorized representatives in carrying out any duties under this act, or (3) refuses to admit an authorized representative of the division to any mine which is subject to this act, or (4) refuses to permit the inspection or investigation of any mine which is subject to this act, or of an accident, injury, or occupational disease occurring in or connected with such a mine, or (5) refuses to furnish the division any information or report requested by the division and which may reasonably be necessary to carry out the provisions of this act, shall be guilty of a misdemeanor, and shall upon conviction thereof be punished for each such offense by a fine of not less than one hundred dollars (\$100), or more than three thousand dollars (\$3,000), or by imprisonment in the county jail not exceeding six (6) months, or both. In any instance in which such offense is committed by a corporation, any officer or authorized representative of such corporation who knowingly permits such offense to be committed shall, upon conviction, be subject to the same fine or imprisonment, or both.

History: En. Sec. 4, Ch. 72, L. 1911; re-en. Sec. 3435, R. C. M. 1921; amd. Sec. 4, Ch. 310, L. 1971; amd. Sec. 23, Ch. 182, L. 1975.

Amendments

The 1971 amendment completely rewrote this section. For previous text, see parent volume.

The 1975 amendment substituted "division" for "board" throughout the section.

50-119. Definitions. "Authorized representative" means mine inspector or any other person employed or authorized by the division to perform any and all duties under this act. "Division" means the division of workers' compensation of the state of Montana. "Corporation" means a body formed and authorized by law to act as a single person although constituted by one or more persons and legally endowed with various rights and duties including the capacity of succession. "Employee" means every person in this state, including a contractor other than an "independent contractor," who is in the service of an employer as hereinafter defined in or about any mine, mill, smelter, excavation, or quarry under any appointment or contract of hire, express or implied, oral or written, whether lawfully or unlawfully employed and whether the employment is casual or otherwise. "Employer" means every person, firm, partnership, corporation, or association, including an independent contractor, who has any person in service in or about any mine, mill, smelter, excavation, or quarry under any appointment or contract of hire, express or implied, oral or written. "Inspector" means a person or persons employed by the division to inspect metallic and nonmetallic mines, mills, smelters, or quarries as provided in this act. "Mine" means any mine (or excavation) when clay, metallic ore, mineral, gypsum, or rock is dug or mined whether on surface or underground, where metal-bearing ores or nonmetallic mineral commodities (exclusive of coal or lignite) are dug or mined whether at the surface or underground. "Notice" means a written notice, work order or correction notice issued by an authorized representative of the division, which notice specifies a violation(s) and directs or recommends corrective measures and may specify a definite date or time in which to abate said violation(s). "Occupational health" means any of those health conditions

that occur as a result of employment in a mine. "Order" means and includes any decision, rule, regulation, direction, requirement, or standard set, adopted, or issued by the division, or any other determination or decision made by the division.

History: En. 50-119 by Sec. 5, Ch. 310, L. 1971; amd. Sec. 24, Ch. 182, L. 1975.

Title of Act

An act amending sections 50-101, 50-102, 50-108, and 50-118, R. C. M., 1947, adding section 50-119 and repealing sections 50-103, 50-104, 50-105, 50-106, 50-107, 50-109, 50-110, 50-111, 50-112, 50-113, 50-114, 50-115, 50-116, 50-117, R. C. M., 1947, to update the law so that it conforms and is equal to the Federal Metal and Nonmetallic Safety Act in order that Montana may qualify as and have what is known as a "state approved plan."

Amendments

The 1975 amendment substituted "division of workers' compensation" or "division" for "industrial accident board" or "board" throughout the section.

Repealing Clause

Section 6 of Ch. 310, Laws 1971 read "Sections 50-103, 50-104, 50-105, 50-106, 50-107, 50-109, 50-110, 50-111, 50-112, 50-113, 50-114, 50-115, 50-116 and 50-117 are hereby repealed."

CHAPTER 2—SAMPLING AND ASSAYING OF ORE

- Section 50-202. Samples of fifty pounds per ton to be retained until settlement.
 50-204. Umpire assayers—appointment, qualifications, and duties.
 50-205. Notice of selection.

50-202. (3437) Samples of fifty pounds per ton to be retained until settlement. A person, association, or corporation which buys any ores upon an agreement to pay for them in amount dependent upon their metallic contents or smelts any ore shall retain from the pulp or crushed ore, as the same is sampled, a quantity of not less than 50 pounds out of each ton of ore, which quantity shall be selected regularly and at equal intervals from any lot of ore so bought or to be smelted, and shall keep this quantity separate from any other ores or pulp for a period of 30 days or until full settlement is made and accepted by the shipper. Until full settlement is made and accepted, the ore shipper, his agents, or representatives may take from the quantity so retained any part thereof for the purpose of sampling or assaying that part; however, the value of any part so taken by the owner or shipper may be deducted from the total value of the ore delivered by him.

History: En. Sec. 2, Ch. 54, L. 1909; re-en. Sec. 3437, R. C. M. 1921; amd. Sec. 1, Ch. 39, L. 1977.

Amendments

The 1977 amendment substituted "a

quantity" for "an amount" after "as the same is sampled" in the first sentence; and made minor changes in phraseology, punctuation and style.

50-204. (3439) Umpire assayers—appointment, qualifications, and duties. A person, association, or corporation engaged in the sampling of ores with intent to purchase or smelt them, whether for themselves or as the agent or agents for other purchasers, shall choose an assayer who has operated an assay office or chemical laboratory within this state for at least 1 year. The person, association, or corporation shall submit to the selected assayer all samples of ore over which there is a dispute as to metallic contents or value between the buyer or sampler and the seller of

the ore. The chosen assayer shall be known as the umpire for the person, association, or corporation.

History: En. Sec. 1, Ch. 115, L. 1909; re-en. Sec. 3439, R. C. M. 1921; amd. Sec. 2, Ch. 39, L. 1977.

Amendments

The 1977 amendment deleted "on or before the tenth day of April, 1909" after

"agent or agents for other purchasers, shall" in the first sentence; inserted "The person, association, or corporation" at the beginning of the second sentence; and made minor changes in phraseology, punctuation and style.

50-205. (3440) Notice of selection. Upon the selection of the umpire, who shall be actively engaged in the assaying business in this state, the person, association, or corporation selecting him shall, within 10 days after the selection is made, post a notice of the selection in a conspicuous place within and without the room or house where the sampling of ores is carried on by the person, association, or corporation.

History: En. Sec. 2, Ch. 115, L. 1909; re-en. Sec. 3440, R. C. M. 1921; amd. Sec. 3, Ch. 39, L. 1977.

Amendments

The 1977 amendment substituted "the umpire" for "such assayer or assayers"

near the beginning of the section; substituted "the selection" for "such choice"; deleted "in which shall appear the name of the assayer or assayers so selected" before "in a conspicuous place"; and made minor changes in phraseology.

CHAPTER 3—PAYMENT FOR CONSIGNMENTS OF ORE—PURCHASES FROM LEASED MINES

- Section 50-303. Statement by purchasers of ore from leased mines.
 50-304. Copy of statement to lessee.
 50-305. Shipper—penalty for violation.

50-303. (3444) Statement by purchasers of ore from leased mines. A person or corporation buying or treating ores from leased mines or mining claims shall furnish the lessor and the lessee of the mines or mining claims a true and correct copy of the statement of returns of ores from the sale or shipment. The statement shall show both the gross and net proceeds derived from the sale or shipment of ores. Upon shipment of the ores from leased premises, either for sale or treatment, the shipper shall furnish to any sampling works or smelter buying or treating them the names and post-office addresses of the lessor and the lessee interested in that shipment of ores, and within 7 days after receipt of the statement from the sampling works or smelter, the shipper shall make settlement with the lessor and the lessee for the shipment or sale of ores, based upon the statement received by the parties from the sampling works or smelter.

History: En. Sec. 1, Ch. 79, L. 1921; re-en. Sec. 3444, R. C. M. 1921; amd. Sec. 4, Ch. 39, L. 1977.

Amendments

The 1977 amendment made minor changes in phraseology, punctuation and style.

50-304. (3444.1) Copy of statement to lessee. Sampling works and smelters within this state shall mail a duplicate copy of any statement showing the gross and net proceeds of all ores bought from or treated for lessors of mines to the lessee of the mine or mining claim from which the

ores were extracted at the same time the statement is furnished to the lessor of the mine or mining claim or shipper of the ore.

History: En. Sec. 1, Ch. 17, L. 1937;
amd. Sec. 5, Ch. 39, L. 1977.

Amendments

The 1977 amendment made minor changes in phraseology and punctuation.

50-305. (3445) Shipper—penalty for violation. A person or corporation who, as the shipper, violates 50-303 as amended, is liable to the lessor and the lessee for 10% of the net returns from the shipment or sale of ores returned in that section, in addition to the value of the interest of the lessor and the lessee in the shipment. This amount may be recovered in an action in any court of competent jurisdiction.

History: En. Sec. 2, Ch. 79, L. 1921;
re-en. Sec. 3445, R. C. M. 1921; amd. Sec.
6, Ch. 39, L. 1977.

lates 50-303 as amended" for "shall violate the provisions of section 50-303" in the first sentence; and made minor changes in phraseology, punctuation and style.

Amendments

The 1977 amendment substituted "vio-

CHAPTER 4—REGULATION OF COAL MINING INDUSTRY— COAL MINING CODE

- Section 50-401. Short title.
- 50-401.1. Definitions.
- 50-402. Coal mine inspectors—appointment.
- 50-403. Qualifications of inspector.
- 50-404. Powers and duties of division.
- 50-405. No conflict of interests by mine inspector.
- 50-407. Division to post statement of conditions at some conspicuous location.
- 50-412.1. Division may adopt rules.
- 50-428. Necessary to have maps of coal mines.
- 50-429. Underground survey.
- 50-430. Map for every seam.
- 50-431. Map of the surface.
- 50-432. Copies of maps for division.
- 50-433. Semiannual surveys.
- 50-434. Abandoned mines.
- 50-434.1. Boundary lines.
- 50-467.1. Nonpermissible internal-combustion engines.
- 50-468. Airways.
- 50-476. Safety regulations—mine examiners.
- 50-477. Notice to inspectors.
- 50-478. Duty of division.
- 50-479. Hoisting—licensing of hoisting engineers.
- 50-480. Inspections and investigations—access to mine—order to close mine or abate violation—notice—hearing and review.
- 50-480.1. Inspections—continued.
- 50-480.2. Imminent danger elimination.
- 50-480.3. Inspections—standards violated—abatement.
- 50-480.4. Findings and orders.
- 50-480.5. Order subject to review.
- 50-480.6. Application for hearing.
- 50-480.7. Review of order.
- 50-480.8. Expeditious hearing by division.
- 50-481. Violation of the act—penalties.
- 50-482. Severability.

50-401. (3447) Short title. This chapter shall be known and may be cited as the "Montana Coal Mining Code."

History: En. Sec. 1, Ch. 120, L. 1911; re-en. Sec. 3447, R. C. M. 1921; amd. Sec. 1, Ch. 267, L. 1974.

Amendments

The 1974 amendment substituted the present wording for "This act shall be known as the Coal Mining Code of the state of Montana."

50-401.1. Definitions. As used in this chapter:

(1) "Division" means the division of workmen's compensation of the department of labor and industry provided for in 82A-1004, and the state coal mine inspectors employed by the division.

(2) "Mine" and "coal mine" means all parts of the property of a mining plant which contribute, directly or indirectly, under one management, to the mining or handling of coal.

(3) "Excavations" and "workings" means all parts of a mine excavated or being excavated, including shafts, slopes, tunnels, entries, rooms, and working places, whether abandoned or in use.

(4) "Shaft" means any vertical opening through the strata which is or may be used for the purpose of ventilation or escape, or for hoisting or lowering of men or material in connection with the mining of coal.

(5) "Slope" and "drift" means respectively an incline or horizontal way, opening, or tunnel to a seam of coal to be used for the same purpose as a shaft.

(6) "Following shot" means a shot which is dependent in its action on the result of another shot.

(7) "Operator" as applied to the party in control of a mine under this chapter, means the person, firm, or body corporate who is the immediate proprietor as owner or lessee of the plant, and, as such, is responsible for the condition and management thereof.

(8) "Mine foreman" means a person who is charged with the general direction of the underground work, or both the underground work and the outside work of a coal mine, and who is commonly known and designated as "mine boss."

(9) "Mine examiner" means a person charged with the examination of the condition of the mine before the miners are permitted to enter it, and who is commonly known as the "fire boss."

(10) "Gassy mine" means a mine is considered to be potentially gassy. The division may further define this term in its rules.

History: En. 50-401.1 by Sec. 2, Ch. 267, L. 1974.

Title of Act

An act revising and updating the "Coal Mining Code"; extending the regulation of coal mining to meet the requirements of the federal Coal Mine Health and Safety Act of 1969; amending sections

50-401 through 50-405, 50-407, 50-428 through 50-434 and 50-468, R. C. M. 1947; and repealing sections 50-406, 50-410 through 50-427, 50-435 through 50-465, 50-467, 50-469 through 50-475, 50-501 through 50-509, and 50-511 through 50-531, R. C. M. 1947; and providing an effective date.

50-402. (3448) Coal mine inspectors—appointment. The division shall appoint state coal mine inspectors for the enforcement of this chapter.

History: En. Sec. 2, Ch. 120, L. 1911; amd. Sec. 1, Ch. 20, L. 1921; re-en. Sec. 3448, R. C. M. 1921; amd. Sec. 3, Ch. 267, L. 1974.

Amendments

The 1974 amendment substituted the present wording for "The industrial accident board shall appoint a coal mine inspector and shall fix his compensation and term of office."

50-403. (3449) Qualifications of inspector. A person is not eligible to be a state coal mine inspector unless he is a citizen of the United States, a resident of this state, has been actually employed in coal mining five (5) years before his appointment, and holds a mine foreman's certificate and a mine inspector's certificate from this state.

History: En. Sec. 3, Ch. 120, L. 1911; re-en. Sec. 3449, R. C. M. 1921; amd. Sec. 1, Ch. 185, L. 1949; amd. Sec. 4, Ch. 267, L. 1974.

Amendments

The 1974 amendment rewrote this section. For prior version, see parent volume.

50-404. (3450) Powers and duties of division. (1) The division may enter, inspect, and examine any coal mine or any shaft, drift, or slope in the process of sinking for the purpose of mining coal in this state, and the workings and the machinery belonging thereto, at all reasonable times, either by day or night, but not so as to impede or obstruct the workings of the mine.

(2) The division shall immediately notify the owner, lessee, superintendent, or mining boss of the discovery of any violation of the mining laws of this state, and of the penalty thereby imposed for those violations; and if the notice is disregarded, the division may stop immediately the working and operation of any mine or any part thereof where any dangerous or unlawful conditions are found. However, where conditions justify the division in so doing, it may grant a reasonable length of time for making repairs or for putting the mine in proper condition, but the number of workers employed in the mine or in the section of the mine involved shall be limited to those necessary to correct the unsafe condition. Where any stops or cessation of work are enforced, the division may thereafter allow the mine or part of a mine to be reopened when the dangerous or unlawful conditions existing there are removed or remedied so that they no longer exist.

(3) The owner, lessee, operator, superintendent, or mining boss of the mine is required to furnish the means necessary for the entry, inspection, examination, inquiry, and exit. The division shall carefully examine all the coal mines in operation in this state at least every three (3) months, and more often if necessary, to see that every precaution is taken to ensure the safety of all workers that may be engaged in the coal mine. The division shall make a record of the visit, noting the time and the material circumstances of the inspection. If the division has in its possession any complaint to the effect that this chapter is being violated, it shall notify the employer and the employees that it is about to make an inspection. The employees' representative has the right to accompany the division in making an official mine inspection. The owner or operator has the right to personally accompany the division while inspecting his property, or to designate someone to accompany the division.

History: En. Sec. 5, Ch. 120, L. 1911; re-en. Sec. 3450, R. C. M. 1921; amd. Sec. 1, Ch. 113, L. 1941; amd. Sec. 1, Ch. 38, L. 1945; amd. Sec. 2, Ch. 185, L. 1949; amd. Sec. 5, Ch. 267, L. 1974.

Amendments

The 1974 amendment substituted references to "division" throughout the section for references to the "state coal mine inspector and his deputies"; substituted "workers" for "men" and "workmen"; deleted a second sentence in subsection (1) relating to specific conditions into which

the inspector was to inquire; deleted a third subsection relating to penalties for obstructing or failing to co-operate with the inspector; substituted "this chapter" for "the mining code" in the fourth sentence of subsection (3); substituted the fifth sentence in subsection (3) for a sentence permitting the employees to appoint an employee to accompany the inspector; deleted a sentence permitting the inspector to select an employee to accompany him; and made minor changes in phraseology, punctuation and style.

50-405. (3451) No conflict of interests by mine inspector. A state coal mine inspector may not act as agent for a corporation, superintendent, or manager of a mine, and shall in no manner be in the employ of mining companies, nor shall he be interested in any way in coal mining operations, either as owner, lessee, or otherwise.

History: En. Sec. 6, Ch. 120, L. 1911; re-en. Sec. 3451, R. C. M. 1921; amd. Sec. 6, Ch. 267, L. 1974.

Amendments

The 1974 amendment deleted a second

sentence relating to annual reports to the governor by the industrial accident board; and made minor changes in phraseology.

50-406. (3452) Repealed.

Repeal

Section 50-406 (Sec. 7, Ch. 120, L. 1911; Sec. 2, Ch. 38, L. 1945), relating to instru-

ments to be furnished to the state coal mine inspector, was repealed by Sec. 34, Ch. 267, Laws of 1974.

50-407. (3453) Division to post statement of conditions at some conspicuous location. The division shall post in some conspicuous location at each mine visited and inspected by it a plain statement of the conditions of the mine, showing what, in its judgment, is necessary for the better protection of the lives and health of persons employed in the mine. The statement, signed by the division inspector, shall give the date of inspection. Where a local union has jurisdiction over the mine inspected, the division shall post three (3) copies of the statement of conditions within one (1) week after making the inspection. It shall also post a copy at the landing used by the workers, stating what number of workers may be permitted to ride on the cage, car or cars at one time.

History: En. Sec. 8, Ch. 120, L. 1911; re-en. Sec. 3453, R. C. M. 1921; amd. Sec. 3, Ch. 38, L. 1945; amd. Sec. 3, Ch. 185, L. 1949; amd. Sec. 7, Ch. 267, L. 1974.

Amendments

The 1974 amendment substituted references to "division" throughout the section for references to the "state coal mine inspector"; deleted "the number of cubic feet of air per minute in circulation at the last open crosscut of each and every entry, and the last open crosscut in each and every active room or working place, and such other information as he shall deem necessary" from the end of the second sentence; substituted "post three

(3) copies of the statement" in the third sentence for "mail a copy of said statement of conditions to the secretary and district office of the local union having jurisdiction at the mine"; substituted "workers" for "men" in the last sentence; deleted "and at what rate of speed men may be hoisted and lowered on the cage, car or cars in accordance as hereinafter provided for in this act" from the last sentence; deleted a final sentence requiring the inspector to determine whether the code of signals used by engineers and top and bottom workers is conspicuously posted; and made minor changes in phraseology, punctuation and style.

50-408, 50-409. (3454, 3455) Repealed.**Repeal**

Sections 50-408 and 50-409 (Secs. 10, 11, Ch. 120, L. 1911), relating to the testing of

coal mine scales, were repealed by Sec. 43, Ch. 99, Laws 1969.

50-410 to 50-412. (3457 to 3459) Repealed.**Repeal**

Sections 50-410 to 50-412 (Secs. 13 to 15, Ch. 120, L. 1911; Sec. 2, Ch. 20, L. 1921; Sec. 1, Ch. 160, L. 1921; Sec. 4, Ch. 185, L. 1949), relating to charges of neglect of duty by and removal of the

state coal mine inspector, and establishment of a board of examiners to pass on applicants for state inspector, foreman and examiner, were repealed by Sec. 34, Ch. 267, Laws of 1974.

50-412.1. Division may adopt rules. The division may adopt rules to carry out the provisions of this chapter, and safety standards for all coal mines in this state.

History: En. 50-412.1 by Sec. 8, Ch. 267, L. 1974.

50-413 to 50-427. (3460 to 3468, 3473 to 3476, 3478) Repealed.**Repeal**

Sections 50-413 to 50-427 (Secs. 16 to 18, 20 to 24, 26, 30 to 34, 36, Ch. 120, L. 1911; Secs. 3, 4, Ch. 20, L. 1921; Secs. 2, 4 to 7, Ch. 160, L. 1921; Secs. 5 to 12, Ch. 185, L. 1949), relating to the board of

examiners, and examination and appointment of state coal mine inspector, mine foreman, mine examiner and fire boss, were repealed by Sec. 34, Ch. 267, Laws of 1974.

50-428. (3479) Necessary to have maps of coal mines. Every operator of every coal mine in this state shall make or cause to be made an accurate map or plan of the mines, drawn to a scale of not less than two hundred feet (200') to one inch (1"), and as much larger as practicable, on which shall appear the name of the state, county, and township in which the mine is located, the designation of the mine, the name of the company or owner, the certificate of the certified engineer or surveyor as to the accuracy and date of the survey, the north point, and the scale to which the drawing is made.

History: En. Sec. 37, Ch. 120, L. 1911; re-en. Sec. 3479, R. C. M. 1921; amd. Sec. 9, Ch. 267, L. 1974.

Amendments

The 1974 amendment substituted "certified" for "mining" before "engineer or surveyor" near the end of the section; and made minor changes in style.

50-429. (3480) Underground survey. For the underground working, the map shall show all power distribution and ventilation in mines and all shafts, slopes, tunnels, or other openings to the surface or to the workings of a contiguous mine; all excavations, entries, rooms, and crosscuts; the rise or dip of the seam from the the bottom of the shaft, mouth of drift, or slope in either direction to the face of the workings; the location of the fan; the location of the permanent pumps, hauling engines, engine-planes, and fire walls; the location of any standing water which might prove a menace to life or danger to property from flood; and the line of any contiguous surface outcrop of the seam.

History: En. Sec. 38, Ch. 120, L. 1911; re-en. Sec. 3480, R. C. M. 1921; amd. Sec. 13, Ch. 185, L. 1949; amd. Sec. 10, Ch. 267, L. 1974; amd. Sec. 7, Ch. 39, L. 1977.

Amendments

The 1974 amendment inserted "all power distribution and ventilation in maps

and" after "shall show" at the beginning of the section; and made minor changes in phraseology and punctuation.

The 1977 amendment substituted "mines" for "maps" after "power distribution and ventilation in" near the beginning of the section; and made minor changes in punctuation.

50-430. (3481) Map for every seam. A separate and similar map for all active mining areas, drawn to the same scale in all cases, shall be made of every seam, which shall be worked in any mine, and the maps of all seams shall show all shafts, drifts, tunnels, incline planes, or other passageways connecting them.

History: En. Sec. 39, Ch. 120, L. 1911; re-en. Sec. 3481, R. C. M. 1921; amd. Sec. 11, Ch. 267, L. 1974.

Amendments

The 1974 amendment inserted "for all active mining areas" after "map"; and made minor changes in phraseology.

50-431. (3482) Map of the surface. Every map or plan, or, at the option of the operator, a separate map, shall show the surface boundary lines contiguous to the workings and pertaining to each mine, also all section or quarter-section lines and corners, town lots and streets, the tracts and side tracts of all railroads, the location of all wagon roads, rivers, streams, ponds, buildings, landmarks, and principal objects on the surface within the boundary lines; and in all cases, if of an underground mine, it shall be drawn on a transparency so that it can be laid upon the map of the underground workings, and indicate the relative location of the lines and objects on the surface to the excavations of the mine.

History: En. Sec. 40, Ch. 120, L. 1911; re-en. Sec. 3482, R. C. M. 1921; amd. Sec. 12, Ch. 267, L. 1974.

an underground mine" for "if of a separate surface map" before "it shall be drawn on a transparency"; and made minor changes in phraseology.

Amendments

The 1974 amendment substituted "if of

50-432. (3483) Copies of maps for division. The original or true copies of all maps shall be kept in the office at the mine, and true copies shall also be furnished the division within thirty (30) days after their completion. The maps delivered to the division shall become the property of the state. They shall be kept at the office of the division and be open to inspection by all persons interested in them. An examination shall only be made in the presence of a division inspector, and he shall not permit any copies of them to be made without the written consent of the operator or owner of the property, under penalty of removal from office.

History: En. Sec. 41, Ch. 120, L. 1911; re-en. Sec. 3483, R. C. M. 1921; amd. Sec. 13, Ch. 267, L. 1974.

Amendments

The 1974 amendment substituted "division" for "state coal mine inspector" and

"inspector" in the first three sentences; deleted a clause from the second sentence requiring the maps to remain in the inspector's custody; inserted "division" before "inspector" in the last sentence; and made minor changes in punctuation and phraseology.

50-433. (3484) Semiannual surveys. (1) An extension of the last preceding survey of every mine in active operation shall be made once

every six (6) months and the result of the survey, with the date, shall be promptly and accurately entered upon the original maps so as to show all changes in plan or new work in the mine, and all extensions of the workings to the most advanced boundary of the workings which have been made since the preceding survey. The changes and extensions shall be entered on the copies of the maps of the division, or new copies furnished it, within thirty (30) days after the last survey is made. When the operator of a mine neglects or refuses, or for any cause not satisfactory to the division fails, for a period of three (3) months, to furnish the division the map or plan of the mine, or a copy, or of the extension, the division may make or cause to be made an accurate map or plan of the mine at the expense of the owner or lessee, and the cost may be recovered from the owner, lessee, or operator, in the same manner as other debts by suit in the name of the state.

(2) The division shall require an extension of the last preceding survey, once every twelve (12) months, of every mine in active operation in which five (5) men or less are employed on any one shift.

History: En. Sec. 42, Ch. 120, L. 1911; re-en. Sec. 3484, R. C. M. 1921; amd. Sec. 14, Ch. 185, L. 1949; amd. Sec. 14, Ch. 267, L. 1974.

Amendments

The 1974 amendment substituted "division" for "state coal mine inspector" throughout the section; and made minor changes in phraseology, punctuation and style.

50-434. (3485) Abandoned mines. (1) When a coal mine is worked out, or is about to be abandoned, or indefinitely closed, the operator shall make or cause to be made a final survey of all available parts of the mine, and the results shall be duly extended on all maps and copies of the mine, to show all excavations and the most advanced workings of the mine, and their exact relations to the boundary or section lines on the surface.

(2) The division may order a survey to be made of the workings of a mine which is about to be abandoned, or of which it has reason to believe the maps are inaccurate, whenever in its judgment the safety of the workers, the support of the surface, the conservation of the property, or the safety of an adjoining mine requires it. The survey shall be at the expense of the state.

History: En. Sec. 43, Ch. 120, L. 1911; re-en. Sec. 3485, R. C. M. 1921; amd. Sec. 15, Ch. 267, L. 1974.

Amendments

The 1974 amendment substituted "divi-

sion" for "state coal mine inspector" in subsection (2); substituted "workers" for "workmen" in subsection (2); and made minor changes in phraseology and style.

50-434.1. Boundary lines. In no case shall the workings of a coal mine be driven nearer than fifty feet (50') to the boundary line of the coal rights pertaining to the mine, except for the purpose of establishing connecting workings between properties owned by the same person, or an underground communication between contiguous mines as provided for elsewhere in rules adopted by the division.

History: En. 50-434.1 by Sec. 16, Ch. 267, L. 1974.

50-435 to 50-465. (3486 to 3508) Repealed.**Repeal**

Sections 50-435 to 50-465 (Secs. 44 to 66, Ch. 120, L. 1911; Sec. 1, Ch. 28, L. 1927; Secs. 1 to 3, Ch. 146, L. 1937; Sec. 1, Ch. 145, L. 1939; Secs. 1, 2, Ch. 30, L. 1945; Secs. 1, 2, Ch. 31, L. 1945; Secs. 1, 2,

Ch. 32, L. 1945; Secs. 1, 2, Ch. 33, L. 1945; Secs. 4 to 6, Ch. 38, L. 1945; Secs. 15 to 19, 27, Ch. 185, L. 1949), relating to mining safety regulations, were repealed by Sec. 34, Ch. 267, Laws of 1974.

50-467. (3510) Repealed.**Repeal**

Section 50-467 (Sec. 68, Ch. 120, L. 1911; Sec. 21, Ch. 185, L. 1949), relating

to mining safety regulations, was repealed by Sec. 34, Ch. 267, Laws of 1974.

50-467.1. Nonpermissible internal-combustion engines. Nonpermissible internal-combustion engines or other machinery which gives off noxious fumes may not be permitted underground in any coal mine.

History: En. 50-567.1 by Sec. 17, Ch. 267, L. 1974.

50-468. (3511) Airways. The owner, lessee, or operator of every coal mine shall provide and maintain airways of sufficient dimensions, and in no case shall the area of the air-course be less than twenty-five (25) square feet in mines operated in any underground system.

History: En. Sec. 69, Ch. 120, L. 1911; re-en. Sec. 3511, R. C. M. 1921; amd. Sec. 18, Ch. 267, L. 1974.

any underground system" at the end of the section for "on the room and pillar system"; and made minor changes in phraseology.

Amendments

The 1974 amendment substituted "in

50-469 to 50-475. (3512 to 3514) Repealed.**Repeal**

Sections 50-469 to 50-475 (Secs. 70 to 72, Ch. 120, L. 1911; Secs. 28, 29, Ch. 185,

L. 1949; Secs. 1, 3, Ch. 188, L. 1959), relating to mining safety regulations, were repealed by Sec. 34, Ch. 267, Laws of 1974.

50-476. Safety regulations—mine examiners. (1) A person may not enter a mine which is generating firedamp in great enough quantities to be detected by a safety lamp until the mine examiners make a report to the division.

(2) A person, unless accompanied by the mine examiner, may not go beyond a danger signal until all standing gas discovered has been removed or diluted and rendered harmless by a current of air. A person ordered to withdraw by the mine foreman or mine examiner from the mine on account of the interruption of the ventilation may not reenter the mine until given permission to do so by the mine foreman.

(3) A person other than the mine examiner may not remove any caution board or danger signal placed at the entrance to any working place or at the entrance to any old workings in a mine.

(4) A person may not erase or change a mark of reference or monument made in connection with a measurement, change marks or dates on any caution board, or erase or change the dates at room or entry face, when made by the mine examiner, or take for his use a life check not issued

to him under rules adopted by the division or change the checks on cars, wrongfully check a car, or do any act with intent to defraud.

(5) A person may not take anything containing fire, except as provided for in rules adopted by the division, into an underground mine.

(6) A person may not place refuse in or obstruct an airway or break-through used as an airway. A worker or other person may not damage or alter a water gauge, barometer, air-course, brattice equipment, machinery, or livestock, obstruct or throw open any airway, handle or disturb any part of the machinery of the hoisting engine of a mine, open a door of a mine and neglect to close it, endanger the miners or those working therein, disobey an order given in pursuance of law, or do a willful act endangering the lives or health of persons working there or the security of a mine or machinery.

History: En. 50-476 by Sec. 19, Ch. 267, L. 1974; amd. Sec. 8, Ch. 39, L. 1977.

Amendments

The 1977 amendment substituted "in great enough quantities" for "so as" after

"generating firedamp" in subsection (1); designated the former last sentence of subsection (4) as subsection (5); redesignated former subsection (5) as subsection (6); and made minor changes in phraseology, punctuation and style.

50-477. Notice to inspectors. Within fifteen (15) days after the close of each calendar month the operator of a coal mine shall report to the division the tons of coal produced each day during the preceding month. Immediate notice must be conveyed to the division by the operator interested:

(1) when an accident occurs whereby a person receives serious or fatal injury;

(2) when work is commenced to sink a shaft, slope or drift, either for hoisting or escape purposes;

(3) when there is intent to abandon a mine or to reopen an abandoned mine;

(4) upon the appearance of a large body of firedamp in a mine, whether accompanied by explosion or not, and upon the occurrence of a serious fire within the mine or on the surface around the mine;

(5) when the workings of a mine are approaching near an abandoned mine believed to contain accumulation of water or gas; or,

(6) upon the accidental closing or intended abandonment of a regularly established passageway to an escape outlet.

History: En. Sec. 50-477 by Sec. 20, Ch. 267, L. 1974.

50-478. Duty of division. (1) When advised by an operator of any accident in a coal mine involving loss of life or serious personal injury, the division shall, if it considers it necessary from the facts reported, and in all cases of loss of life, immediately have an inspector go to the scene of the accident within forty-eight (48) hours of notification. Every operator of a coal mine, or his agent, shall make and preserve for the information of the division, upon uniform blanks furnished by the division, a record of all injuries sustained by any employees on the premises.

(2) The division may also make any original or supplementary investigation which it considers necessary as to the nature and cause of an accident, and shall make a record of the circumstances and of the result of the investigations for its files.

(3) The inspection team shall include a division coal mine inspector, the employer or his designee, and a representative of the employees.

(4) The operator shall, upon being notified of a fatality in a coal mine, relay that information promptly to the district office of the miners' organization. The representative of the miners' organization, or some person delegated by him, may enter any coal mine for the purpose of investigating the causes of a fatal accident.

History: En. 50-478 by Sec. 21, Ch. 267,
L. 1974.

50-479. Hoisting—licensing of hoisting engineers. Hoisting of personnel and licensing of hoisting engineers shall be performed in mines under the provisions of the law and rules and standards adopted by the division.

History: En. 50-479 by Sec. 22, Ch. 267,
L. 1974.

50-480. Inspections and investigations—access to mine—order to close mine or abate violation—notice—hearing and review. The division may at any time perform such inspections and investigations as it considers necessary in surface and underground mines which are subject to this chapter for the purpose of obtaining, utilizing, and disseminating information relating to health and safety conditions in the mines, the causes of accidents involving bodily injury or loss of life, or the causes of occupational diseases originating therein, and for the purpose of determining whether there is compliance with a health and safety standard or order issued under this chapter.

History: En. 50-480 by Sec. 23, Ch. 267,
L. 1974.

50-480.1. Inspections—continued. For the purpose of making an inspection or investigation authorized by this chapter, representatives of the division may enter, upon or through, any mine which is subject to this chapter.

History: En. 50-480.1 by Sec. 24, Ch.
267, L. 1974.

50-480.2. Imminent danger elimination. If, upon an inspection of a mine the division finds that the conditions or practices in the mine are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the danger can be eliminated, the division shall determine the extent of the area of the mine throughout which the danger exists, and order the operator of the mine to have all persons (except the persons designated below, whose presence in the area is necessary to eliminate the danger described in the order) withdrawn from and excluded from entering the area:

(1) a person whose presence in the area is necessary in the judgment of the operator of the mine, to eliminate the danger;

(2) a public official whose official duties require him to enter the area;

(3) a legal or technical consultant, or a representative of the employees of the mine, who is a person qualified to make mine examinations, or is accompanied by such a person, and whose presence in the area is necessary in the judgment of the operator of the mine, for the proper investigation of the conditions in the area.

History: En. 50-480.2 by Sec. 25, Ch. 267, L. 1974.

50-480.3. Inspections—standards violated—abatement. If, upon an inspection or investigation, the division finds that there has been a failure to comply with a mandatory standard which is applicable to the mine, but that the failure to comply has not created a danger that could reasonably be expected to cause death or serious physical harm in the mine immediately or before the imminence of the danger can be eliminated, it shall determine what would be a reasonable period of time within which the violation should be totally abated and issue a notice fixing a reasonable time for the abatement of the violation. If, upon the expiration of the period of time as originally fixed or extended, the division finds that the violation has not been totally abated, and if it also finds that the period of time should not be further extended, it shall also find the extent of the area which is affected by the violation. The division shall order the operator of the mine to have all persons in the area (excepting the following persons whose presence in the area is necessary to abate the violation described in the order) to be withdrawn from, and to be excluded from entering the area:

(1) a person whose presence in the area is necessary, in the judgment of the operator of the mine, to abate the violation;

(2) a public official whose official duties require him to enter the area;

(3) a legal or technical consultant, or a representative of the employees of the mine who is a person qualified to make examinations, or is accompanied by such a person, and whose presence in the area is necessary in the judgment of the operator of the mine, for the proper investigation of the conditions in the area.

History: En. 50-480.3 by Sec. 26, Ch. 267, L. 1974.

50-480.4. Findings and orders. (1) Findings and orders issued under this chapter shall contain a detailed description of the conditions or practices which cause and constitute a situation of imminent danger or a violation of a mandatory standard, and a description of the area of the mine throughout which persons must be withdrawn and excluded.

(2) Each finding made and notice or order issued by the division shall be given promptly to the operator of the mine to which it pertains, and all the findings, orders, and notices shall be in writing, and shall be

signed by the division inspector making them. A notice or order issued by the division under this chapter may be amended, canceled, or revised by the division.

History: En. 50-480.4 by Sec. 27, Ch. 267, L. 1974.

50-480.5. Order subject to review. The order of the division shall remain in effect, but shall immediately be subject to review as provided in this chapter.

History: En. 50-480.5 by Sec. 28, Ch. 267, L. 1974.

50-480.6. Application for hearing. An operator notified of an order made under section 50-480.2 may apply to the division for a hearing, revision, or amendment of the order. When the division after a hearing upon complaint, or upon its own motion, finds that danger throughout the area of the mine as set out in the order existed at the time of making the inspection, it shall make an order denying a revision, or amendment. However, if it finds that the danger did not exist throughout the area of the mine, it shall make an order consistent with its findings, revising, or amending the order under review.

History: En. 50-480.6 by Sec. 29, Ch. 267, L. 1974.

50-480.7. Review of order. An operator notified of an order made under 50-480.3, as amended, may apply to the division for a hearing or revision of the order. If the division finds that there was no violation, it shall make an order rescinding the order under review. If the division finds that there was a violation but the violation has since been abated, it shall make an order rescinding the order under review. If the division finds that the violation was not totally abated, it shall make an order consistent with its findings.

History: En. 50-480.7 by Sec. 30, Ch. 267, L. 1974; amd. Sec. 9, Ch. 39, L. 1977; amd. Sec. 5, Ch. 187, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 39 and once by Ch. 187. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 39, Laws of 1977, substituted "50-480.3, as amended" for "section 50-480.2" in the first sentence; and made a minor change in punctuation.

Chapter 187, Laws of 1977, substituted the reference to 50-480.3 for a reference to 50-480.2; and made a minor change in punctuation.

50-480.8. Expeditious hearing by division. In view of the urgent need for prompt decisions of matters submitted to the division under this chapter, all actions which the division is required to take under this chapter shall be taken as rapidly as practicable, consistent with adequate consideration of the issues involved.

History: En. 50-480.8 by Sec. 31, Ch. 267, L. 1974.

50-481. Violation of the act—penalties. (1) When an operator:

(a) violates or fails or refuses to comply with an order, rule, or standard adopted under this chapter, or

(b) interferes with, hinders, or delays the division or its authorized representatives in carrying out any duties under this chapter, or

(c) refuses to admit an authorized representative of the division to a mine which is subject to this chapter, or

(d) refuses to permit the inspection or investigation of a mine, or an accident, injury, or occupational disease occurring in or connected with a mine, or

(e) refuses to furnish the division any information or report requested by the division and which may reasonably be necessary to carry out the provisions of this chapter; a civil action for preventive relief, including, but not limited to, an application for a permanent or temporary injunction, restraining order, or other appropriate order, may be instituted by the division in the district court for the county in which the mine in question is located or in which the mine operator has its principal office.

(2) A person who knowingly:

(a) violates or fails or refuses to comply with an order, rule, or standard adopted under this chapter, or

(b) interferes with, hinders, or delays the division or its authorized representatives in carrying out any duties under this chapter, or

(c) refuses to admit an authorized representative of the division to a mine, or

(d) refuses to permit the inspection or investigation of a mine, or of an accident, injury, or occupational disease occurring in or connected with a mine, or

(e) refuses to furnish the division any information or report requested by the division and which may reasonably be necessary to carry out the provisions of this chapter; is guilty of a misdemeanor, and shall be punished for each offense by a fine of not less than one hundred dollars (\$100), or more than three thousand dollars (\$3,000), or by imprisonment in the county jail not exceeding six (6) months, or both. In an instance in which the offense is committed by a corporation, an officer or authorized representative of the corporation who knowingly permits the offense to be committed is subject to the same fine or imprisonment, or both.

History: En. 50-481 by Sec. 32, Ch. 267, L. 1974.

50-482. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid parts remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

History: En. 50-482 by Sec. 33, Ch. 267, L. 1974.

Repealing Clause

Section 34 of Ch. 267, Laws 1974 read

"Sections 50-406, 50-410, 50-411, 50-412, 50-413, 50-414, 50-415, 50-416, 50-417, 50-418, 50-419, 50-420, 50-421, 50-422, 50-423, 50-424, 50-425, 50-426, 50-427, 50-435, 50-436, 50-437, 50-438, 50-439, 50-440, 50-441,

50-442, 50-443, 50-444, 50-445, 50-446, 50-447, 50-448, 50-449, 50-450, 50-451, 50-452, 50-453, 50-454, 50-455, 50-456, 50-457, 50-458, 50-459, 50-460, 50-461, 50-462, 50-463, 50-464, 50-465, 50-467, 50-469, 50-470, 50-471, 50-472, 50-473, 50-474, 50-475, 50-501, 50-502, 50-503, 50-504, 50-505, 50-506, 50-507, 50-508, 50-509, 50-511, 50-512, 50-513, 50-514, 50-515, 50-516, 50-517, 50-518, 50-

519, 50-520, 50-521, 50-522, 50-523, 50-524, 50-525, 50-526, 50-527, 50-528, 50-529, 50-530, and 50-531, R. C. M. 1947, are repealed."

Effective Date

Section 35 of Ch. 267, Laws 1974 read "This act is effective January 1, 1975."

CHAPTER 5—REGULATION OF COAL MINING INDUSTRY—COAL MINING CODE CONTINUED

50-501 to 50-509. (3515 to 3518, 3520 to 3524) Repealed.

Repeal

Sections 50-501 to 50-509 (Secs. 73 to 76, 78 to 82, Ch. 120, L. 1911; Sec. 1, Ch. 27, L. 1927; Secs. 7 to 13, Ch. 38, L. 1945;

Secs. 22 to 24, Ch. 185, L. 1949; Sec. 2, Ch. 188, L. 1959), relating to mining safety regulations, were repealed by Sec. 34, Ch. 267, Laws of 1974.

50-511 to 50-531. (3526 to 3535, 3537 to 3546) Repealed.

Repeal

Sections 50-511 to 50-531 (Secs. 84 to 93, 95 to 104, Ch. 120, L. 1911; Sec. 1, Ch. 185, L. 1921; Secs. 15 to 21, Ch. 38,

L. 1945; Sec. 1, Ch. 83, L. 1947; Secs. 25, 26, 30, Ch. 185, L. 1949), relating to mining safety regulations, were repealed by Sec. 34, Ch. 267, Laws of 1974.

CHAPTER 6—REGULATIONS FOR SALE AND MARKETING OF COAL

Section 50-604. Copies of bills and invoices to be kept for inspection.
50-606. Enforcement of chapter.

50-603. (3546.3) Repealed.

Repeal

Section 50-603 (Sec. 3, Ch. 104, L. 1927),

relating to the weight of coal, was repealed by Sec. 43, Ch. 99, Laws 1969.

50-604. (3546.4) Copies of bills and invoices to be kept for inspection.

A person, firm, or corporation, mining, shipping, or producing coal, and all persons, firms or corporations wholesaling, jobbing, exchanging, offering for sale or selling at retail any coal in this state, shall keep a true, accurate, and complete copy of all the original statements, bills, and invoices of all coal produced, shipped, marketed, exchanged, or sold for at least one (1) year. All papers, records and files of any person, firm, or corporation transporting, producing, shipping, exchanging, or selling any coal in this state shall, at all times, be open to inspection by the attorney general, the county attorneys, and the department of business regulation for the purposes of enforcing this act.

History: En. Sec. 4, Ch. 104, L. 1927; amd. Sec. 117, Ch. 431, L. 1975.

Amendments

The 1975 amendment deleted "within the state of Montana" after "shall keep"

in the first sentence; substituted "department of business regulation" for "state sealer of weights and measures" near the end of the section; and made minor changes in phraseology and punctuation.

50-606. (3546.6) Enforcement of chapter. The department of business regulation shall enforce this act and the attorney general and the county attorneys shall prosecute all cases arising under its provisions.

History: En. Sec. 6, Ch. 104, L. 1927; partment of business regulation" for
amd. Sec. 118, Ch. 431, L. 1975. "state sealer of weights and measures";
and made minor changes in phraseology.

Amendments

The 1975 amendment substituted "de-

CHAPTER 7—LOCATION AND RECORD OF MINING AND MILLSITE CLAIMS

- Section 50-701. Discovery—notice—marking boundaries—compliance with federal law.
50-702. Record of certificate of location.
50-702.1. Filing of false mining claims prohibited—punishment.
50-704. Recording of affidavit of performance of annual work.
50-714. Effect of patent.

50-701. (7365) Discovery—notice—marking boundaries—compliance with federal law. Any person who discovers upon the public domain of the United States, within the state of Montana, a vein, lode, or ledge of rock in place, bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, or a placer deposit of gold, or other deposit of minerals having a commercial value which is subject to entry and patent under the mining laws of the United States, may, if qualified by the laws of the United States, locate a mining claim upon such vein, lode, ledge, or deposit in the following manner, viz.:

1. * * * [Same as parent volume.]

2. Within thirty days after posting the notice of location, he shall distinctly mark the location on the ground so that its boundaries can be readily traced. It shall be prima facie evidence that the location is properly marked if the boundaries are defined by a monument at each corner or angle of the claim, consisting of any one of the following kinds: (1) A tree at least eight inches in diameter, and blazed on four sides; (2) A post at least four inches square by four feet six inches in length, set one foot in the ground, unless solid rock should occur at a less depth, in which case the post should be set upon such rock, and surrounded in all cases by a mound of earth or stone at least four feet in diameter by two feet in height. A squared stump of the requisite size, surrounded by such mound, shall be deemed the equivalent of a post and mound; (3) A stone at least six inches square by eighteen inches in length, set two-thirds of its length in the ground, with a mound of earth or stone alongside at least four feet in diameter by two feet in height; or (4) A boulder at least three feet above the natural surface of the ground on the upper side. Where other monuments, or monuments of lesser dimensions than those above described, are used, it shall be a question for the jury, or for the court where the action is tried without a jury, as to whether the location has been marked upon the ground so that its boundaries can be readily traced. Whatever monument is used, it must be marked with the name of the claim and the designation of the corner, either by number or cardinal point.

3. Within sixty (60) days after posting such notice, the locator shall comply with the United States mining laws.

History: Earlier acts were those of quartz claims, appearing as Secs. 1477 and Feb. 11, 1876, governing location of 1478, 5th Div. Comp. Stat. 1887.

Ap. p. Sec. 3610, Pol. C. 1895; en. Sec. 1, Ch. 16, L. 1907; Sec. 2283, Rev. C. 1907; re-en. Sec. 7365, R. C. M. 1921; amd. Sec. 1, Ch. 4, Ex. L. 1971. Cal. Civ. C. Sec. 1426.

Amendments

The 1971 amendment substituted a new subdivision 3 for the subdivision 3 appearing in the parent volume; corrected a typographical error; and made a minor change in style.

50-702. (7366) Record of certificate of location. Within sixty (60) days after posting the notice of location, the locator shall record his location in the office of the county clerk of the county in which the mining claim is situated, and within twenty (20) days thereafter the county clerk shall provide a copy thereof to the department of state lands, Helena, Montana. The record shall consist of a certificate of location for each claim containing:

1. The name of the lode or claim and whether located as a lode or placer claim.
2. The name of the locator or locators, if there be more than one, together with the post-office address of such locator or locators.
3. The date of location, and the description of the claim, with reference to some natural object or permanent monument, as will identify the claim and the section, township, and range wherein the claim is situated (by projected survey lines if located in unsurveyed country).
4. The directions and distances from the discovery point which describe the claim.

The certificate of location must be verified, before some officer authorized to administer oaths, by the locator, or one of the locators if there be more than one, or by authorized agent. In the case of a corporation, the verification may be made by any officer thereof, or by an authorized agent. When the verification is made by an agent, the fact of the agency shall be stated in the affidavit. A certificate of location so verified, or a certified copy thereof, is prima facie evidence of all facts properly recited therein. Failure of the locator or locators to record a certificate of location as herein required shall create a prima facie presumption of intent to abandon. However, recordation after the sixty (60) day period, but before the ground is located by another renews the location and saves the rights of the original locator. Nothing contained in section 50-713 affects the prima facie presumption created by this section.

History: Ap. p. Sec. 3612, Pol. C. 1895; amd. Sec. 2, p. 141, L. 1901; amd. Sec. 2, Ch. 16, L. 1907; Sec. 2284, Rev. C. 1907; re-en. Sec. 7366, R. C. M. 1921; amd. Sec. 2, Ch. 4, Ex. L. 1971; amd. Sec. 1, Ch. 428, L. 1973.

Amendments

The 1971 amendment deleted "and for the purpose of constituting constructive notice of the location" after "notice of location" in the first sentence of the introductory paragraph; added "and within twenty * * * successor agency" to the first

sentence of the introductory paragraph; inserted "for each claim" in the second sentence of the introductory paragraph; added "and whether located as a lode or placer claim" to the end of subdivision 1; added "together with the post-office address of such locator or locators" to the end of subdivision 2; added "and the section * * * unsurveyed country" to the end of subdivision 3; substituted a new subdivision 4 for former subdivisions 4 and 5; deleted the designation of former subdivision 6 and made it the final paragraph; deleted the former first sentence

of the present final paragraph; added the last two sentences to the final paragraph; and made a minor change in style.

The 1973 amendment deleted "and investments" following "department of state lands" near the end of the first sentence in the first paragraph; and made minor changes in style and phraseology.

Reference to Natural or Permanent Monument

Fact that location certificate did not refer to a natural or permanent monument was of no significance when contestant found a copy of the certificate at the entrance to the mine. *McCarthy v. Morris*, 159 M 227, 497 P 2d 97.

50-702.1. Filing of false mining claims prohibited—punishment.

Every person who shall offer any location certificate for a placer mining claim, or lode claim, or affidavit of assessment work to be filed in an office of a county clerk of this state on behalf of himself, or for any other person, or any person who shall procure others to do so, knowing that such claim, or certificate or affidavit was not preceded by a proper location of the claim physically upon the ground by the establishment of a proper notice of claim and the designation of the surface boundaries of the claim by substantial posts or monuments as required by the laws of the state shall be punished by imprisonment in the state penitentiary for not more than five (5) years, or by a fine of not more than five thousand dollars (\$5,000), or by both.

History: En. Sec. 1, Ch. 135, L. 1973.

Effective Date

Title of Act

An act prohibiting the filing of false mining claims; providing for a penalty; and providing for an effective date.

Section 2 of Ch. 135, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 5, 1973.

50-704. (7368) Recording of affidavit of performance of annual work.

The owner of a lode or placer claim who performs or causes to be performed the annual work, or makes the improvements required by the laws of the United States, as permitted and defined by laws of the United States, in order to prevent the forfeiture of the claim, must, within ninety (90) days after the expiration of the federal annual assessment work period, file in the office of the county clerk of the county in which such claim or claims is situated an affidavit of his own, or an affidavit of the person who performed such work or made the improvements, showing:

1. The name of the mining claim or claims;
2. The location of the claim or claims by section, township, and range (by projected survey lines if located in unsurveyed country);
3. The book and page numbers wherein the original or latest amended relocation for each claim is recorded;
4. The number of days' work done, and the character and value of the improvements placed thereon, or the verified report required by United States mining law if geological, geophysical, or geochemical work or labor is being relied upon;
5. The dates between which such work or improvements were effected;
6. At whose instance the work was done or the improvements made;
7. The actual amount paid for work and improvements, and by whom paid when the same was not done by the owner.

Annual assessment work may be performed or caused to be performed at one (1) or more points within a group of contiguous claims and may be utilized to satisfy annual assessment work requirements upon the group of contiguous claims. Said point or points of work may be performed upon a patented claim. If annual assessment work is performed or caused to be performed at one (1) or more points within a group of contiguous claims, the affidavit of performance of assessment work must be filed for the group of claims. The affidavit, in addition to requirements established by this section for affidavits of performance of assessment work, must contain a description and location of the work done upon the group at a point or points within the group, the specific names of all the claims in the group for whose benefit the work was performed, and the total cost of the work performed.

If group work is claimed for a group of claims crossing county lines, the affidavit required by this section shall be filed for recording within the required time in each of the counties in which such claims are located.

An affidavit of performance of annual assessment work must be verified, before some officer authorized to administer oaths, by the locator, or one of the locators if there be more than one, or by authorized agent. In the case of a corporation, the verification may be made by any officer thereof, or by an authorized agent. When the verification is made by an agent, the fact of the agency shall be stated in the affidavit. Such affidavits, or a certified copy thereof, are prima facie evidence of the facts therein stated. The failure to file such affidavits within the period allowed therefor shall be prima facie evidence that such labor has not been performed and that the owner of the claim or claims has abandoned and surrendered same.

History: En. Sec. 1483, 5th Div. Comp. Stat. 1887; amd. Sec. 3614, Pol. C. 1895; re-en. Sec. 7368, R. C. M. 1921; amd. Sec. 3, Ch. 4, Ex. L. 1971; amd. Sec. 1, Ch. 312, L. 1973; amd. Sec. 1, Ch. 112, L. 1974. Cal. Civ. C. Sec. 1426m.

Amendments

The 1971 amendment inserted "as permitted and defined by laws of the United States" in the introductory paragraph; substituted "must" for "may" after "forfeiture of the claim" in the introductory paragraph; substituted "ninety (90)" for "twenty" in the introductory paragraph; substituted "expiration of the federal annual assessment work period" for "annual work" in the introductory paragraph; inserted new subdivisions 2 and 3; redesignated former subdivision 2 as subdivision 4 and added to the end "or the verified * * * relied upon"; revised and reworded former subdivision 3 and redesignated it

as subdivision 5; redesignated former subdivisions 4 and 5 as subdivisions 6 and 7; added the three paragraphs after the numbered subdivisions; made the former final paragraph into the fourth sentence of the present final paragraph; and made minor changes in phraseology.

The 1973 amendment deleted "not exceeding ten (10)" following "contiguous claims" in the first and second sentences of the first paragraph following the numbered clauses.

The 1974 amendment inserted "Said point or points of work may be performed upon a patented claim" as the second sentence in the second paragraph.

Amount of Work Required

Recorded affidavit was prima facie evidence that annual assessment work was done, and it was not important how much work was done. *McCarthy v. Morris*, 159 M 227, 497 P 2d 97.

50-714. (7378) Effect of patent. The issuance of a United States patent for a mining claim is considered conclusive evidence that the requirements of the laws of this state relative to the location and record of such mining claim have been duly complied with. However, if questions

of priority are involved, the date of the location shall be an issuable fact when it is claimed to have been prior to the date of the record of the location.

History: En. Sec. 12, Ch. 16, L. 1907; Sec. 2294, Rev. C. 1907; re-en. Sec. 7378, R. C. M. 1921; amd. Sec. 10, Ch. 39, L. 1977.

Amendments

The 1977 amendment substituted "is considered conclusive evidence" for "shall be deemed conclusive" in the first sentence; and made minor changes in phraseology and punctuation.

CHAPTER 8—MINING—RIGHTS OF WAY

Section 50-805. Court order and appointment of commissioners.

50-813. Eminent domain for open pit mining—agreement to purchase property required.

50-815. Measure of compensation for property.

50-816. Notice to owners of condemnation for open pit mining—filing of plat.

50-805. (7386) Court order and appointment of commissioners. Upon the return of the summons or upon any day to which the hearing is adjourned, the defendants may answer, and issue must be joined, and the judge must hear the allegations and proofs of the respective parties. If, upon such hearing, the judge is satisfied that the claims of the plaintiff can be worked conveniently only by means of the privilege asked for, he must make an order adjudging and awarding to the plaintiff such right-of-way and must appoint three commissioners who are disinterested persons and residents of the county to assess the damages to the lands or claims affected by such order.

History: En. Sec. 5, p. 598, Cod. Stat. 1871, on Jan. 12, 1872; re-en. Sec. 890, 5th Div. Rev. Stat. 1879; re-en. Sec. 1499, Comp. Stat. 1887; amd. and re-en. Sec. 3634, Pol. C. 1895; re-en. Sec. 2301, Rev. C. 1907; re-en. Sec. 7386, R. C. M. 1921; amd. Sec. 11, Ch. 39, L. 1977.

Amendments

The 1977 amendment deleted "demur or" after "the defendants may" in the first sentence; and made minor changes in phraseology, punctuation and style.

50-813. Eminent domain for open pit mining—agreement to purchase property required. Whenever the right of eminent domain is exercised to acquire estates and rights in land for the purpose of open pit mining of the ores, metals or minerals owned by the plaintiff, the decree shall be granted on condition that the plaintiff protects the public in the immediate area by agreeing to purchase all property within three hundred (300) yards of the surface tract condemned, including vacant lots, provided the owner or owners thereof serve upon the plaintiff and file with the court a written offer stating the amount asked for such property within thirty (30) days from the entry of the court order appointing commissioners in said eminent domain proceeding. In the event the plaintiff and the owner or owners are unable to agree upon the compensation to be paid for such property, the court, upon petition of either party, may proceed to determine the compensation to be paid for such property in the manner prescribed in Title 93, chapter 99, Revised Codes of Montana, 1947, as amended, for ascertaining the value of property taken through the exercise of the right of eminent domain.

History: En. Sec. 1, Ch. 240, L. 1961; amd. Sec. 1, Ch. 304, L. 1973.

Amendments

The 1973 amendment substituted "all property" for "all residential property"

after "agreeing to purchase" in the first sentence; increased the distance specified in the first sentence from 300 feet to 300 yards; and deleted "in a residential area" after "vacant lots" in the first sentence.

50-815. Measure of compensation for property. (1) The measure of compensation for the property located within three hundred (300) yards of the surfaced tract condemned shall be the fair market value or the value of similar property in a similar area not affected by open pit mining operations, whichever the owner of the surface property shall elect to receive.

(2) The measure of compensation for a building owned by the city, county, or state shall be the value of the cost of replacing the building in a similar area not affected by open pit mining operations.

History: En. Sec. 3, Ch. 240, L. 1961; amd. Sec. 2, Ch. 304, L. 1973.

Amendments

The 1973 amendment designated the former section as subsection (1); substi-

tuted "the property" and "similar property" in subsection (1) for "the residential property" and "similar residential property"; increased the distance specified in subsection (1) from 300 feet to 300 yards; and added subsection (2).

50-816. Notice to owners of condemnation for open pit mining—filing of plat. Any party seeking to condemn property for open pit mining purposes shall serve notice in writing on all owners of property within three hundred (300) yards of the surface tract sought to be condemned or in lieu thereof shall file a plat showing the boundaries of the property sought to be condemned in the office of the county clerk and recorder, and the filing of said plat shall constitute notice to the owner or owners not personally served with written notice as herein provided.

History: En. Sec. 4, Ch. 240, L. 1961; amd. Sec. 3, Ch. 304, L. 1973.

Amendments

The 1973 amendment substituted "own-

ers of property" for "all residential property owners"; and increased the specified distance from 300 feet to 300 yards.

CHAPTER 9—CONSOLIDATION OF BOILER AND MINES INSPECTORS UNDER CONTROL OF INDUSTRIAL ACCIDENT BOARD

50-901. (3034) Consolidation boiler, mine and coal mine inspectors.

Cross-References

Industrial accident board abolished and functions transferred, sec. 82A-1005 (1).

CHAPTER 10—STRIP AND UNDERGROUND MINE RECLAMATION ACT

- Section 50-1034. Short title.
 50-1035. Policy of state—findings.
 50-1036. Definitions.
 50-1037. Orders and rules of board—hearings.
 50-1038. Administration—functions of department.
 50-1039. Permit required to engage in strip mining or underground mining—application for permit—contents—fee—bond—agencies exempt—annual report.

- 50-1039.1. Protection of the surface owner.
- 50-1040. Increase or reduction in area—application—fee—bond.
- 50-1041. Prospecting permit—application—contents—reclamation plan—fee—bond.
- 50-1042. Refusal of permit—grounds.
- 50-1043. Submission and action on reclamation plan.
- 50-1044. Area mining required—grading and revegetation—release of bond—alternative plan.
- 50-1045. Planting of vegetation following grading of disturbed area.
- 50-1046. Time of commencement of reclamation.
- 50-1047. Planting report—inspection and release of bond.
- 50-1048. Vegetation planted as property of landowner.
- 50-1050. Notice of noncompliance—suspension of permits—conditions required for reinstatement of permits.
- 50-1051. Successive operators.
- 50-1052. Receipts paid into special fund—use of fund.
- 50-1053. Funds received by board—reclamation work by board—rehabilitation of unreclaimed lands.
- 50-1054. Reclamation of lands after bond forfeited.
- 50-1055. Mandamus to compel enforcement of law—action for damage to water supply—damage from surface water—other remedies.
- 50-1056. Violation—civil penalty—injunction—misdemeanor.
- 50-1057. Procedure for hearings and appeals.

50-1001 to 50-1017. Repealed.

Repeal

Sections 50-1001 to 50-1017 (Secs. 1-4, Ch. 245, L. 1967; Secs. 1-13, Ch. 199, L.

1969), relating to strip coal mining and reclamation of lands, were repealed by Sec. 18, Ch. 224, Laws 1971.

50-1018 to 50-1033. Repealed.

Repeal

Sections 50-1018 to 50-1033 (Secs. 1 to 16, Ch. 224, L. 1971), relating to open cut or strip mined land reclamation, were repealed by Sec. 26, Ch. 325, Laws 1973

and Sec. 17, Ch. 326, Laws 1973. For present law, see secs. 50-1034 to 50-1057 and 50-1501 to 50-1516. Chapter 391, Laws of 1973 purported to amend section 50-1032 but was void under section 43-515.

50-1034. Short title. This act shall be known and may be cited as "The Montana Strip and Underground Mine Reclamation Act."

History: En. Sec. 1, Ch. 325, L. 1973; amd. Sec. 14, Ch. 441, L. 1975.

Title of Act

An act creating "The Montana Strip Mining and Reclamation Act" and providing for the control of prospecting for and the strip mining of coal, clay, phosphate rock, and uranium; providing for permits, reclamation plan requirements, methods of operation, and penalties; pro-

viding for the termination of reclamation contracts entered into under chapter 245, Laws of Montana, 1967; repealing sections 50-1018 through 50-1033, R. C. M. 1947; and providing an effective date.

Amendments

The 1975 amendment substituted the present title for "The Montana Strip Mining and Reclamation Act."

50-1035. Policy of state—findings. It being the declared policy of this state and its people

—to maintain and improve the state's clean and healthful environment for present and future generations,

—to protect its environmental life-support system from degradation,

—to prevent unreasonable degradation of its natural resources,

—to restore, enhance, and preserve its scenic, historic, archeologic, scientific, cultural, and recreational sites,

—to demand effective reclamation of all lands disturbed by the taking of natural resources, and

—to require the legislature to provide for proper administration and enforcement, create adequate remedies, and set effective requirements and standards (especially as to reclamation of disturbed lands) in order to achieve the aforementioned objectives,

the legislature hereby finds and declares:

(1) That, in order to achieve the aforementioned policy objectives, promote the health and welfare of the people, control erosion and pollution, protect domestic stock and wildlife, preserve agricultural and recreational productivity, save cultural, historic, and aesthetic values, and assure a long-range dependable tax base, it is reasonably necessary to require, after the effective date of this act, that all strip mining and underground mining operations be limited to those for which annual permits are granted, that no permit be issued until the operator presents a comprehensive plan for reclamation and restoration, together with an adequate performance bond, and the plan is approved, that certain other things must be done, that certain remedies are available, and that certain lands because of their unique or unusual characteristics may not be strip mined or underground mined under any circumstances, all as more particularly appears in the remaining provisions of this act.

(2) That this act be deemed to be an exercise of the authority granted in the Montana constitution, as adopted June 6, 1972, and in particular, a response to the mandate expressed in article IX thereof, and also be deemed to be an exercise of the general police power to provide for the health and welfare of the people.

History: En. Sec. 2, Ch. 325, L. 1973; amd. Sec. 15, Ch. 441, L. 1975.

Compiler's Notes

Chapter 325, Laws of 1973 became effective March 16, 1973.

Amendments

The 1975 amendment inserted "and un-

derground mining" after "strip mining" near the middle of subdivision (1); deleted "surface" before "reclamation and restoration" near the middle of subdivision (1); and inserted "or underground mined" after "not be strip mined" near the end of subdivision (1).

50-1036. Definitions. Unless the context requires otherwise in this act:

(1) "mineral" means coal and uranium;

(2) "overburden" means all of the earth and other materials which lie above a natural mineral deposit and also means such earth and other material after removal from their natural state in the process of mining;

(3) "strip mining" means any part of the process followed in the production of mineral by the open cut method including mining by the auger method or any similar method which penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine which enters the deposit from a surface excavation, or any other mining method or process in which the strata or overburden is removed or displaced in order to recover the mineral;

(4) "prospecting" means the removal of overburden, core drilling, construction of roads or any other disturbance of the surface for the purpose of determining the location, quantity, or quality of a natural mineral deposit;

(5) "area of land affected" means the area of land from which overburden is to be or has been removed and upon which the overburden is to be or has been deposited and includes all land overlying any tunnels, shafts or other excavations used to extract the mineral, lands affected by the construction of new railroad loops and roads or the improvement or use of existing railroad loops and roads to gain access and to haul the mineral, processing or other mine associated facilities, waste deposition areas, treatment ponds, and any other surface or subsurface disturbance associated with strip mining or underground mining;

(6) "operation" means all of the premises, facilities, railroad loops, roads, and equipment used in the process of producing and removing mineral from a designated strip mine or underground mine area, or prospecting for the purpose of determining the location, quality, or quantity of a natural mineral deposit;

(7) "operator" means a person engaged in strip mining or underground mining who removes or intends to remove more than ten thousand (10,000) cubic yards of mineral or overburden;

(8) "person" means a person, partnership, corporation, association, or other legal entity, or any political subdivision, or agency of the state;

(9) "method of operation" means the method or manner by which the cut, open pit, shaft, or excavation is made, the overburden is placed or handled, water is controlled and other acts are performed by the operator in the process of uncovering and removing the minerals that affect the reclamation of the area of land affected;

(10) "topsoil" means the unconsolidated mineral matter naturally present on the surface of the earth that has been subjected to and influenced by genetic and environmental factors of parent material, climate, macro- and micro-organisms, and topography, all acting over a period of time, and that is necessary for the growth and regeneration of vegetation on the surface of the earth;

(11) "department" means the department of state lands provided for in Title 82A, chapter 11;

(12) "commissioner" means the commissioner of state lands provided for in section 82A-1104;

(13) "board" means the board of land commissioners provided for in article X, section 4 of the constitution of this state;

(14) "reclamation" means backfilling, subsidence stabilization, water control, grading, highwall reduction, topsoiling, planting, revegetation, and other work to restore an area of land affected by strip mining or underground mining under a plan approved by the department;

(15) "degree" means from the horizontal, and in each case is subject to a tolerance of five per cent (5%) error;

(16) "contour strip mining" means that strip mining method commonly carried out in areas of rough and hilly topography in which the coal or mineral seam outcrops along the side of the slope and entrance is made to the seam by excavating a bench or table cut at and along the site of the seam outcropping with the excavated overburden commonly being cast down the slope below the mineral seam and the operating bench;

(17) "bench" means the ledge, shelf, table, or terraces formed in the contour method of strip mining;

(18) "fill bench" means that portion of a bench or table which is formed by depositing overburden beyond or down slope from the cut section as formed in the contour method of strip mining;

(19) "abandoned" means an operation where no mineral is being produced and where the department determines that the operation will not continue or resume;

(20) "underground mining" means any part of the process followed in the production of a mineral such that vertical or horizontal shafts, slopes, drifts, or incline planes connected with excavations penetrating the mineral stratum or strata are utilized;

(21) "aquifer" means any geologic formation or natural zone beneath the earth's surface that contains or stores water and transmits it from one point to another in quantities which permit or have the potential to permit economic development as a water source;

(22) "subsidence" means a vertically downward movement of overburden materials resulting from the actual mining of an underlying mineral deposit or associated underground excavations;

(23) "written consent" means such written statement as is executed by the owner of the surface estate, upon a form approved by the department, demonstrating that such owner consents to entry of an operator for the purpose of conducting strip mining operations and that such consent is given only to such strip mining and reclamation operations which fully comply with the terms and requirements of this chapter;

(24) "surface owner" means a person (a) who holds legal or equitable title to the land surface; and (b) whose principal place of residence is on the land; or who personally conducts farming or ranching operations upon a farm or ranch unit to be directly affected by strip mining operations; or who receives directly a significant portion of his income, if any, from such farming or ranching operations; (c) or the state of Montana where the state owns the surface;

(25) "waiver" means any document which demonstrates the clear intention to release rights in the surface estate for the purpose of permitting the extraction of subsurface minerals by strip mining methods.

History: En. Sec. 3, Ch. 325, L. 1973; amd. Sec. 1, Ch. 209, L. 1974; amd. Sec. 1, Ch. 235, L. 1974; amd. Sec. 16, Ch. 441, L. 1975; amd. Sec. 1, Ch. 538, L. 1975.

Compiler's Notes

This section was amended twice in

1975, once by Ch. 441 and once by Ch. 538. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 209, Laws of 1974, deleted a reference to "clay" in the definition of "mineral" in subdivision (1).

Chapter 235, Laws of 1974, deleted a reference to "phosphate rock" in the definition of "mineral" in subdivision (1).

Chapter 441, Laws of 1975, deleted "strip" before "mining" in subdivision (2); inserted "land overlying any tunnels, shafts or other excavations used to extract the mineral" and "processing or

other * * * or underground mining" in subdivision (5); inserted "or underground mining" after "strip mining" throughout the section; inserted "shaft or excavation" in subdivision (9); inserted "subsidence stabilization, water control" in subdivision (14); and added the definitions of "underground mining," "aquifer" and "subsidence."

Chapter 538, Laws of 1975, added the definitions of "written consent," "surface owner," and "waiver."

50-1037. Orders and rules of board—hearings. The board:

(1) shall issue after an opportunity for a hearing, orders requiring an operator to adopt the remedial measures necessary to comply with this act and rules adopted under this act;

(2) shall issue after an opportunity for a hearing, a final order directing the department to revoke a permit, when the requirements set forth by the notice of noncompliance, order of suspension, or an order of the board requiring remedial measures have not been complied with according to the terms herein;

(3) shall adopt after an opportunity for a hearing, general rules pertaining to strip mining and to underground mining to accomplish the purposes of this act;

(4) shall conduct hearings under provisions of this act or rules adopted by the board.

History: En. Sec. 4, Ch. 325, L. 1973;
amd. Sec. 17, Ch. 441, L. 1975.

Amendments

The 1975 amendment inserted "and to underground mining" in subdivision (3).

50-1038. Administration—functions of department. The department:

(1) shall exercise general supervision, administration, and enforcement of this act and all rules and orders adopted under this act;

(2) shall examine and pass upon all plans and specifications submitted by the operator for the method of operation, subsidence stabilization, water control, backfilling, grading, highwall reduction, topsoiling and for the reclamation of the area of land affected by his operation;

(3) shall order the suspension of any permit for failure to comply with this act or any rule adopted under this act;

(4) shall order the halting of any operation that is started without first having secured a permit as required by this act;

(5) shall make investigations and inspections necessary to ensure compliance with this act;

(6) may encourage and conduct investigations, research, experiments and demonstrations, and collect and disseminate information relating to strip mining and to underground mining and reclamation of lands and waters affected by strip mining and underground mining;

(7) may adopt rules with respect to the filing of reports, the issuance of permits and other matters of procedure and administration.

History: En. Sec. 5, Ch. 325, L. 1973; amendment. Sec. 18, Ch. 441, L. 1975. ence stabilization, water control" in subdivision (2); and inserted "and to underground mining" in two places in subdivision (6).

Amendments

The 1975 amendment inserted "subsid-

50-1039. Permit required to engage in strip mining or underground mining—application for permit—contents—fee—bond—agencies exempt—annual report. (1) An operator may not engage in strip or underground mining without having first obtained from the department a permit designating the area of land affected by the operation, which designation shall include all lands reasonably anticipated to be mined or otherwise affected during the applicable 5-year period. The permit shall authorize the operator to engage in strip or underground mining upon the area of land described in his application and designated in the permit for a period of 5 years from the date of its issuance. Such permit shall be renewable upon each 5-year anniversary thereafter upon application to the department at least thirty (30) but not more than sixty (60) days prior to the renewal date so long as the operator is in compliance with the requirements of this act, the rules hereunder, and the reclamation plan provided for in section 50-1043 and agrees to comply with all applicable laws and rules in effect at the time of renewal. Such renewal shall further be subject to the denial provisions of sections 50-1042, 50-1046 and 50-1050.

(2) An operator shall file an annual report with the department within 30 days of the anniversary date of each permit. Included within this report shall be:

(a) the name and address of the operator and permit number;

(b) a report in such detail as the department shall require, supplemented with maps, cross sections, or other material indicating the extent to which mining operations have been carried out, the progress of all reclamation work, the extent to which expectations and predictions made in the original application have been fulfilled, and any deviation therefrom, and the number of acres affected; and

(c) a revised schedule or timetable of operations and reclamation and an estimate of the number of acres to be affected during the next 1-year period.

(3) Upon receipt of the annual report the department may make further inquiry and request further information, and if it does so shall allow a reasonable opportunity for the operator to respond.

(4) When problem situations are revealed by review of new information or as a result of field inspections, the department may order such changes in the mining and reclamation plans as are necessary to insure compliance with this chapter.

(5) An operator desiring a permit shall file an application which shall contain a complete and detailed plan for the mining, reclamation, revegetation, and rehabilitation of the land and water to be affected by the operation. Such plan shall reflect thorough advance investigation and study by the operator and shall include all known or readily discoverable past and present uses of the land and water to be affected and the approximate periods of such use and shall state:

(a) the location and area of land to be affected by the operation, with a description of access to the area from the nearest public highways;

(b) the names and addresses of the owners of record of the surface of the area of land to be affected by the permit and the owners of record of all surface area within one-half (.5) mile of any part of the affected area;

(c) the names and addresses of the present owners of record of all subsurface minerals in the land to be affected;

(d) the source of the applicant's legal right to mine the mineral on the land affected by the permit;

(e) the permanent and temporary post-office addresses of the applicant;

(f) whether the applicant or any person associated with the applicant holds or has held any other permits under this act, and an identification of those permits;

(g) whether the applicant is in compliance with section 50-1050 and whether every officer, partner, director, or any individual owning of record or beneficially (alone or with associates) if known, ten per cent (10%) or more of any class of stock of the applicant, is subject to any of the provisions of section 50-1050 and he shall so certify, and whether any of the foregoing parties or persons have ever had a strip mining or underground mining license or permit issued by any other state or federal agency revoked, or have ever forfeited a strip mining or underground mining bond or a security deposited in lieu of a bond and if so, a detailed explanation of the facts involved in each case must be attached;

(h) the names and addresses of any persons who are engaged in strip or underground mining activities on behalf of the applicant;

(i) the annual rainfall and the direction and average velocity of the prevailing winds in the area where the applicant has requested a permit;

(j) the results of any test borings or core samplings which the applicant or his agent has conducted on the land to be affected, including the nature and the depth of the various strata or overburden and topsoil, the quantities and location of subsurface water and its quality, the thickness of any mineral seam, an analysis of the chemical properties of such minerals, including the acidity, sulphur content, and trace mineral elements of any coal seam, as well as the British thermal unit (B.T.U.) content of such seam, and an analysis of the overburden, including topsoil. If test borings or core samplings are submitted, each permit application shall contain two (2) copies each of two (2) sets of geologic cross-sections accurately depicting the known geologic makeup beneath the surface of the affected land. Each set shall depict subsurface conditions at five hundred (500) foot intervals across the surface and shall run at a ninety (90) degree angle to the other set unless the department determines that closer intervals are required. Each cross-section shall depict the thickness and geological character of all known strata beginning with the top soil; in addition, each application for an underground mining permit shall be accompanied by cross-sections and maps showing the proposed underground locations of all shafts, entries, and haulageways or other

excavations to be excavated during the permit year. These cross-sections shall also include all existing shafts, entries and haulageways;

(k) the name and date of a daily newspaper of general circulation within the county in which the applicant has prominently published an announcement of his application for a strip mining or underground mining permit, and a detailed description of the area of land to be affected should a permit be granted;

(l) such other or further information as the department may require.

(6) The application for a permit shall be accompanied by two (2) copies of all maps meeting the requirements of the subsections below. The maps shall:

(a) identify the area to correspond with the application;

(b) show any adjacent deep mining or surface mining and the boundaries of surface properties and names of owners of record of the affected area and within one thousand (1,000) feet of any part of the affected area;

(c) show the names and locations of all streams, creeks, or other bodies of water, roads, buildings, cemeteries, oil and gas wells, and utility lines on the area of land affected and within one thousand (1,000) feet of such area;

(d) show by appropriate markings the boundaries of the area of land affected, any cropline of the seam or deposit of mineral to be mined, and the total number of acres involved in the area of land affected;

(e) show the date on which the map was prepared and the north point;

(f) show the final surface and underground water drainage plan on and away from the area of land affected. This plan shall indicate the directional and volume flow of water, constructed drainways, natural waterways used for drainage, and the streams or tributaries receiving the discharge;

(g) show the proposed location of waste or refuse area;

(h) show the proposed location of temporary subsoil and topsoil storage area;

(i) show the location of test boring holes;

(j) show the surface location lines of any geologic cross-sections which have been submitted;

(k) show a listing of plant varieties encountered in the area to be affected and their relative dominance in the area, together with an enumeration of tree varieties and the approximate number of each variety occurring per acre on the area to be affected, and the locations generally of the various kinds and varieties of plants, including but not limited to grasses, shrubs, legumes, forbs and trees;

(l) be certified as follows: "I, the undersigned, hereby certify that this map is correct, and shows to the best of my knowledge and belief all the information required by the mining laws of this state." The certification shall be signed and notarized. The department may reject a map as incomplete if its accuracy is not so attested;

(m) contain such other or further information as the department may require.

(7) In addition to the information and maps required above, each application for a permit shall be accompanied by detailed plans or proposals showing the method of operation, the manner, time or distance, and estimated cost for backfilling, subsidence stabilization, water control, grading work, highwall reduction, topsoiling, planting, revegetating, and a reclamation plan for the area affected by the operation, which proposals shall meet the requirements of this act and rules adopted under this act.

(8) (a) An application fee of fifty dollars (\$50) shall be paid before the permit required in this section shall be issued. The operator shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in the penal sum to be determined by the board (on the recommendation of the commissioner) of not less than two hundred dollars (\$200) nor more than twenty-five hundred dollars (\$2,500) for each acre or fraction thereof of the area of land affected, with a minimum bond of two thousand dollars (\$2,000), conditioned upon the faithful performance of the requirements set forth in this act and of the rules of the board. The level of bonding shall be relative to the degree of disturbance projected by the original permit and the annual report. A political subdivision or agency of the state need not file a bond unless required to do so by the board. The board may require the filing of the bond prior to permit issuance or at any time thereafter.

(b) In determining the amount of the bond within the above limits, the board shall take into consideration the character and nature of the overburden, the future suitable use of the land involved and the cost of backfilling, grading, highwall reduction, subsidence stabilization, water control, topsoiling, and reclamation to be required; but in no event shall the bond be less than the total estimated cost to the state of completing the work described in the reclamation plan.

History: En. Sec. 6, Ch. 325, L. 1973; amd. Sec. 1, Ch. 221, L. 1975; amd. Sec. 19, Ch. 441, L. 1975; amd. Sec. 1, Ch. 352, L. 1977.

Amendments

Chapter 221, Laws of 1975, added the last two sentences in the first paragraph of subsection (5); and made minor changes in style.

Chapter 441, Laws of 1975, inserted the references to "underground mining" throughout the section; added the reference to section 50-1050 at the end of subsection (1); inserted "unless the department determines that closer intervals are required" and "in addition, each application * * * entries and haulageways" in subdivision (2)(j); inserted "or surface mining" in subdivision (3)(b); inserted "final surface and underground water" before "drainage plan" and "and volume"

before "flow of water" in subdivision (3)(f); deleted "strip" before "mining" in subdivision (3)(l); inserted "subsidence stabilization, water control" in subdivisions (4) and (5); and made minor changes in style.

The 1977 amendment added "which designation shall include all lands reasonably anticipated to be mined or otherwise affected during the applicable 5-year period" to the end of the first sentence of subsection (1); substituted "5 years" for "one (1) year" in the second sentence of subsection (1); substituted "upon each 5-year anniversary" in the third sentence of subsection (1) for "from year to year"; inserted the subsections (2) through (4); redesignated former subsections (2) through (5) as subsections (5) through (8); and inserted the third sentence in subsection (8).

50-1039.1. Protection of the surface owner. In those instances in which the surface owner is not the owner of the mineral estate proposed to be mined by strip mining operations, the application for a permit shall

include the written consent, or a waiver by, the owner or owners of the surface lands involved to enter and commence strip mining operations on such land, except that nothing in this section applies when the mineral estate is owned by the federal government in fee or in trust for an Indian tribe.

<p>History: En. 50-1039.1 by Sec. 2, Ch. 538, L. 1975.</p> <p>Title of Act</p> <p>An act to require prior to issuance of a</p>	<p>strip mining permit, the written consent of the owner of a surface estate overlying the mineral estate to be mined when such owner does not own the mineral estate; amending section 50-1036, R. C. M. 1947.</p>
--	---

50-1040. Increase or reduction in area—application—fee—bond. The department may increase or reduce the area of land affected by an operation under a permit on application by an operator, but an increase may not extend the period for which an original permit was issued. An operator may, at any time, apply to the department for an amendment of the permit so as to increase or reduce the acreage affected by it. The operator shall file an application and map in the same form and with the same content as required for an original application under this act and shall pay an application fee of \$50 and shall file with the department a supplemental bond in the amount to be determined under section 6 [50-1039] for each acre or fraction of an acre of the increase approved. If the department approves a reduction in the acreage covered by the original or supplemental permit, it shall release the bond for each acre reduced, but in no case shall the bond be reduced below \$2,000, except as provided in subsection (5) of section 6 [50-1039].

<p>History: En. Sec. 7, Ch. 325, L. 1973; amd. Sec. 2, Ch. 352, L. 1977.</p> <p>Amendments</p> <p>The 1977 amendment deleted "within</p>	<p>one (1) year from the date of issuance of the permit" after "at any time" in the second sentence; and made minor changes in style.</p>
--	---

50-1041. Prospecting permit—application—contents—reclamation plan—fee—bond. (1) On and after the effective date of this act prospecting by any person on land not included in a valid strip mining or underground mining permit shall be unlawful without possessing a valid prospecting permit issued by the department as provided in this section. No prospecting permit shall be issued until the operator submits an application, the application is examined, amended if necessary, and approved by the department, and adequate reclamation performance bond is posted, all of which prerequisites must be done in conformity with the requirements of this act.

(2) An application for a prospecting permit shall be made in writing, notarized, and submitted to the department in duplicate upon forms prepared and furnished by it. The application shall include among other things, a prospecting map and a prospecting reclamation plan of substantially the same character as required for a surface mining or underground mining map and reclamation plan under this act. The department shall determine, by rules and regulations, the precise nature of such required prospecting map and reclamation plan. Any operator who intends to prospect by means of core drilling shall specify the location and number of

holes to be drilled, methods to be used in sealing aquifers, and such other information as may be required by the department. The applicant must state what types of prospecting and excavating techniques will be employed on the affected land. The application shall also include any other or further information the department may require.

(3) The application shall be accompanied by a fee of one hundred dollars (\$100). This fee shall be used as a credit toward the strip mining or underground mining permit fee provided by this act if the area covered by the prospecting permit becomes covered by a valid surface mining or underground mining permit obtained before or at the time the prospecting permit expires.

(4) Before the department gives final approval to the prospecting permit application, the applicant shall file with the department a reclamation and revegetation bond in a form and in an amount as determined in the same manner for strip mining or underground mining reclamation and revegetation bonds under this act.

(5) In the event that the holder of a prospecting permit desires to strip mine or underground mine the area covered by the prospecting permit, and has fulfilled all the requirements for a strip mining or underground mining permit, the department may permit the postponement of the reclamation of the acreage prospected if that acreage is incorporated into the complete reclamation plan submitted with the application for a strip mining or underground mining permit. Any land actually affected by prospecting or excavating under a prospecting permit and not covered by the strip mining or underground mining reclamation plan shall be promptly reclaimed.

(6) The prospecting permit shall be valid for one (1) year, and shall be subject to renewal, suspension, and revocation in the same manner as strip mining or underground mining permits under this act.

(7) The holder of the prospecting permit shall file with the department the same progress reports, maps, and revegetation progress reports, as are required of strip mining or underground mining operators under this act.

History: En. Sec. 8, Ch. 325, L. 1973; **Amendments**
amd. Sec. 20, Ch. 441, L. 1975.

Compiler's Notes

Chapter 325, Laws of 1973, became effective March 16, 1973.

The 1975 amendment inserted "or underground mining" after references to strip mining or surface mining throughout the section.

50-1042. Refusal of permit—grounds. (1) An application for a prospecting, strip mining or underground mining permit shall not be approved by the department if there is found on the basis of the information set forth in the application, an on-site inspection, and an evaluation of the operation by the department that the requirements of the act or rules will not be observed or that the proposed method of operation, backfilling, grading, subsidence stabilization, water control, highwall reduction, topsoiling, revegetation, or reclamation of the affected area cannot be carried out consistent with the purpose of this act.

(2) The department shall not approve the application for a prospecting, strip mining or underground mining permit where the area of land described in the application includes land having special, exceptional, critical, or unique characteristics, or that mining or prospecting on that area would adversely affect the use, enjoyment, or fundamental character of neighboring land having special, exceptional, critical, or unique characteristics. For the purposes of this act, land is defined as having such characteristics if it possesses special, exceptional, critical or unique:

(a) biological productivity, the loss of which would jeopardize certain species of wildlife or domestic stock; or

(b) ecological fragility, in the sense that the land, once adversely affected, could not return to its former ecological role in the reasonable foreseeable future; or

(c) ecological importance, in the sense that the particular land has such a strong influence on the total ecosystem of which it is a part that even temporary effects felt by it could precipitate a system-wide reaction of unpredictable scope or dimensions; or

(d) scenic, historic, archeologic, topographic, geologic, ethnologic, scientific, cultural, or recreational significance. In applying this subsection, particular attention should be paid to the inadequate preservation previously accorded Plains Indian history and culture.

(3) If the department finds that the overburden on any part of the area of land described in the application for a prospecting, strip mining or underground mining permit is such that experience in the state with a similar type of operation upon land with similar overburden shows that substantial deposition of sediment in streambeds, subsidence, landslides, or water pollution cannot feasibly be prevented, the department shall delete that part of the land described in the application upon which the overburden exists.

(4) If the department finds that the operation will constitute a hazard to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, or other public property, the department shall delete those areas from the prospecting, strip mining or underground mining permit application before it can be approved.

History: En. Sec. 9, Ch. 325, L. 1973; amd. Sec. 21, Ch. 441, L. 1975.

Amendments

The 1975 amendment inserted "or underground mining" after references to strip mining throughout the section; in-

serted "subsidence stabilization, water control" before "highwall reduction" in subsection (1); inserted "subsidence" before "landslides, or water pollution" in subsection (3); and made minor changes in punctuation and phraseology.

50-1043. Submission and action on reclamation plan. (1) As rapidly, completely, and effectively as the most modern technology and the most advanced state of the art will allow, each operator granted a permit under this act shall reclaim and revegetate the land affected by his operation, except that underground tunnels, shafts, or other subsurface excavations need not be revegetated. Under the provisions of this act and rules adopted by the board, an operator shall prepare and carry out a method of opera-

tion, plan of grading, backfilling, highwall reduction, subsidence stabilization, water control, topsoiling, and a reclamation plan for the area of land affected by his operation. In developing a method of operation and plans of backfilling, subsidence stabilization, water control, grading, highwall reduction, topsoiling, and reclamation, all measures shall be taken to eliminate damages to landowners and members of the public, their real and personal property, public roads, streams, and all other public property from soil erosion, subsidence, landslides, water pollution, and hazards dangerous to life and property.

(2) The reclamation plan shall set forth in detail the manner in which the applicant intends to comply with this section and 50-1044, 50-1045, and 50-1046, as amended. The plan shall be submitted to the department, and the department shall notify the applicant by certified or registered mail within 120 days after receipt of the plan and complete application if it is or is not acceptable. The department may extend the 120 days an additional 120 days upon notification of the operator in writing. If the plan is not acceptable, the department shall set forth the reasons why the plan is not acceptable, and it may propose modifications, delete areas, or reject the entire plan. A landowner, operator, or any person aggrieved by the decision of the department may by written notice request a hearing by the board. The board shall notify the person by certified or registered mail within 20 days after the hearing of its decision. Every reclamation plan shall be subject to annual review and modification.

(3) In addition to the method of operation, grading, backfilling, subsidence stabilization, water control, highwall reduction, topsoiling, and reclamation requirements of this act and rules adopted under this act, the operator, consistent with the directives of subsection (1) of this section shall:

(a) bury under adequate fill all toxic materials, shale, mineral, or any other material determined by the department to be acid producing, toxic, undesirable, or creating a hazard;

(b) as directed by rules seal off tunnels, shafts, or other openings or any breakthrough of water creating a hazard;

(c) impound, drain, or treat all runoff or underground mine waters so as to reduce soil erosion, damage to grazing and agricultural lands, and pollution of surface and subsurface waters;

(d) remove or bury all metal, lumber, and other refuse resulting from the operation;

(e) use explosives in connection with the operation only in accordance with department regulations designed to minimize noise, damage to adjacent lands, and water pollution and ensure public safety and for other purposes;

(f) adopt measures to prevent land subsidence unless the board approves a plan for inducing subsidence into an abandoned operation in a predictable and controlled manner with measures for grading, topsoiling, and revegetating the subsided land surface. In order for a controlled subsidence plan to be approved, the applicant must show that subsidence will not cause a direct or indirect hazard to any public or private buildings,

roads, facilities, or use areas, constitute a hazard to human life or health, constitute a hazard to domestic livestock or to a viable agricultural operation, or violate any other restrictions the board may consider necessary.

(g) stockpile and protect from erosion all mining and processing wastes until these wastes can be disposed of according to the provisions of this act;

(h) deposit as much stockpiled waste material as possible back into the mine voids upon abandonment in such manner as to prevent or minimize land subsidence. The remaining waste material shall be disposed of as provided by this act and the rules of the board.

(i) seal all portals, entryways, drifts, shafts, or other openings between the surface and underground mine workings upon abandonment.

(4) An operator may not throw, dump, pile, or permit the dumping, piling, or throwing or otherwise placing any overburden, stones, rocks, mineral, earth, soil, dirt, debris, trees, wood, logs, or any other materials or substances of any kind or nature beyond or outside of the area of land which is under permit and for which a bond has been posted under 50-1039, as amended, or place the materials described in this section in such a way that normal erosion or slides brought about by natural physical causes will permit the materials to go beyond or outside of that area of land.

History: En. Sec. 10, Ch. 325, L. 1973; amd. Sec. 22, Ch. 441, L. 1975; amd. Sec. 12, Ch. 39, L. 1977.

Amendments

The 1975 amendment added the exception for subsurface excavations at the end of the first sentence; inserted "subsidence stabilization, water control" in subsections (1) and (2); inserted "subsidence" before "landslides" in the third sentence of subsection (1); inserted "tunnels, shafts, or other openings" in subdivision (2)(b); inserted "or underground mine" after "runoff" in subdivision (2)(c); added

subdivisions (2)(f) to (i); and made minor changes in style and phraseology.

The 1977 amendment divided former subsection (1) into subsections (1) and (2); redesignated former subsections (2) and (3) as subsections (3) and (4); inserted "certified or" before "registered mail" twice in subsection (2); inserted "violate" near the end of the second sentence of subdivision (3)(f); deleted "which is under permit and for which a bond has been posted under section 50-1039" at the end of subsection (4); and made minor changes in phraseology, punctuation and style.

50-1044. Area mining required—grading and revegetation—release of bond—alternative plan. (1) Area strip mining, a method of operation which does not produce a bench or fill bench, is required where strip mining is proposed. All highwalls must be reduced and the steepest slope of the reduced highwall shall be no greater than twenty (20) degrees from the horizontal. Highwall reduction shall be commenced at or beyond the top of the highwall and sloped to the graded spoil bank. Reduction, backfilling, and grading shall eliminate all highwalls and spoil peaks. The area of land affected shall be restored to the approximate original contour of the land. When directed by the department, the operator shall construct in the final grading, such diversion ditches, depressions, or terraces as will accumulate or control the water runoff. Additional restoration work may be required by the department according to rules adopted by the board.

(2) In addition to the backfilling and grading requirements, the oper-

ator's method of operation on steep slopes may be regulated and controlled according to rules adopted by the board. These rules may require any measure whatsoever to accomplish the purpose of this act.

(3) All available topsoil shall be removed in a separate layer, guarded from erosion and pollution, kept in such a condition that it can sustain vegetation of at least the quality and variety it sustained prior to removal, and returned as the top layer after the operation has been backfilled and graded; provided that the operator shall accord substantially the same treatment to any subsurface deposit of material that is capable, as determined by the department, of supporting surface vegetation virtually as well as the present topsoil.

(4) As determined by rules of the board, time limits shall be established requiring backfilling, grading, subsidence stabilization, water control, highwall reduction, topsoiling, planting, and revegetation to be kept current. All backfilling, subsidence stabilization, sealing, grading, and topsoiling shall be completed before necessary equipment is moved from the operation.

(5) When the backfilling, grading, subsidence stabilization, water controls, and topsoiling have been completed and approved by the department, the commissioner may release so much of the bond which was filed for that portion of the operation as the commissioner may determine, provided that no less than two hundred dollars (\$200) per acre shall be retained by the department until such time as the planting and revegetation is done according to law and approved by the department, at which time the commissioner shall release the bond in the remaining amount.

(6) An operator may propose alternative plans other than backfilling, grading, highwall reduction, or topsoiling if the restoration will be consistent with the purpose of this act. These plans shall be submitted to the department, and, after consultation with the landowner, if the plans are approved by the board and complied with within the time limits as may be determined by the board as being reasonable for carrying out the plans, the backfilling, grading, highwall reduction, or topsoiling requirements of this act may be modified by the board. An operator who proposes alternative plans that will affect an existing permit shall comply with the notice requirement of section 50-1039 (5)(k).

History: En. Sec. 11, Ch. 325, L. 1973; amd. Sec. 23, Ch. 441, L. 1975; amd. Sec. 3, Ch. 352, L. 1977.

Amendments

The 1975 amendment added "where strip mining is proposed" at the end of the first sentence; inserted "subsidence stabilization, water control" after "grading" in subdivision (4); inserted "sub-

sidence stabilization, sealing" after "backfilling" in subdivision (4); inserted "subsidence stabilization, water control" after "grading" in subsection (5); and made minor changes in style and punctuation.

The 1977 amendment substituted "50-1039(5)(k)" for "50-1039(2)(k)" at the end of the section.

50-1045. Planting of vegetation following grading of disturbed area.

(1) After the operation has been backfilled, graded, topsoiled, and approved by the department, the operator shall prepare the soil and plant such legumes, grasses, shrubs, and trees upon the area of land affected as

are necessary to provide a suitable permanent diverse vegetative cover capable of:

- (a) feeding and withstanding grazing pressure from a quantity and mixture of wildlife and livestock at least comparable to that which the land could have sustained prior to the operation;
- (b) regenerating under the natural conditions prevailing at the site, including occasional drought, heavy snowfalls, and strong winds; and
- (c) preventing soil erosion to the extent achieved prior to the operation.

The seed or plant mixtures, quantities, method of planting, type and amount of lime or fertilizer, mulching, irrigation, fencing, and any other measures necessary to provide a suitable permanent diverse vegetative cover shall be defined by rules of the board.

(2) All underground shafts, tunnels, or other excavations are excluded from the provisions of subsection (1) of this section.

History: En. Sec. 12, Ch. 325, L. 1973;
amd. Sec. 24, Ch. 441, L. 1975.

Amendments

The 1975 amendment inserted the subsection (1) designation; and added subsection (2).

50-1046. Time of commencement of reclamation. The operator shall commence the reclamation of the area of land affected by his operation as soon as possible after the beginning of strip mining or underground mining of that area in accordance with plans previously approved by the department. Those grading, backfilling, subsidence stabilization, topsoiling, and water management practices that are approved in the plans shall be kept current with the operation as defined by rules of the board and a permit or supplement to a permit may not be issued, if in the discretion of the department, these practices are not current.

History: En. Sec. 13, Ch. 325, L. 1973;
amd. Sec. 25, Ch. 441, L. 1975.

Amendments

The 1975 amendment inserted "or un-

derground mining" after "strip mining" in the first sentence; and inserted "subsidence stabilization" after "backfilling" in the second sentence.

50-1047. Planting report—inspection and release of bond. (1) At least sixty (60) days prior to the date of each permit expiration, the operator shall file a planting report with the department on a form to be prescribed and furnished by the department, giving the following information:

- (a) identification of the operation;
 - (b) the type of planting or seeding, including mixtures and amounts;
 - (c) the date of planting or seeding;
 - (d) the area of land planted;
 - (e) any other relevant information the department requires.
- (2) All planting reports shall be certified by the operator.

(3) Inspection and evaluation for permanent diverse vegetative cover shall be made as soon as it is possible to determine if a satisfactory stand has been established. If the department determines that a satisfactory permanent diverse vegetative cover has been established, it shall release

the remaining bond held on the area reclaimed after public notice and an opportunity for a hearing; but in no event shall such remaining bond be released prior to a period of five (5) years from the initial planting provided for in section 12 [50-1045] of this act.

History: En. Sec. 14, Ch. 325, L. 1973.

50-1048. Vegetation planted as property of landowner. All legumes, grasses, shrubs, and trees which are planted or seeded on the area of land affected as required by this act or rules adopted under this act, become the property of the landowner, after complete release of the bond, unless the operator and the landowner agree otherwise.

History: En. Sec. 15, Ch. 325, L. 1973.

50-1049. Repealed.

Repeal Section 50-1049 (Sec. 16, Ch. 325, L. 1973), relating to an annual report of reclamation work, was repealed by Sec. 5, Ch. 352, Laws 1977.

50-1050. Notice of noncompliance—suspension of permits—conditions required for reinstatement of permits. (1) If any of the requirements of this act or rules or orders of the department and the board have not been complied with within the time limits set by the department or the board or by this act, the department shall serve a notice of noncompliance on the operator, or where found necessary, the commissioner shall order the suspension of a permit. The notice or order shall be handed to the operator in person or served by registered mail addressed to the permanent address shown on the application for a permit. The notice of noncompliance or order of suspension shall specify in what respects the operator has failed to comply with this act or the rules or orders of the department and the board. If the operator has not complied with the requirement set forth in the notice of noncompliance or order of suspension within time limits set therein, the permit may be revoked by order of the board and the performance bond forfeited to the department.

(2) Any additional permits held by an operator whose mining permit has been revoked shall be suspended and the operator is not eligible to receive another permit or to have the suspended permits reinstated until he has complied with all the requirements of this act in respect to former permits issued him. An operator who has forfeited a bond is not eligible to receive another permit unless the land for which the bond was forfeited has been reclaimed without cost to the state, or the operator has paid into the reclamation account a sum together with the value of the bond, the board finds adequate to reclaim the lands. The department may not issue any additional permits to an operator who has repeatedly been in non-compliance or violation of this act.

History: En. Sec. 17, Ch. 325, L. 1973.

50-1051. Successive operators. Where one operator succeeds another at an uncompleted operation, either by sale, assignment, lease, or otherwise, the department may release the first operator from all liability under

this act as to that particular operation if both operators have been issued a permit and have otherwise complied with the requirements of this act, and the successor operator assumes as part of his obligation under this act, all liability for the reclamation of the area of land affected by the former operator.

History: En. Sec. 18, Ch. 325, L. 1973.

50-1052. Receipts paid into special fund—use of fund. (1) All fees, forfeit funds, and other moneys available or paid to the department under the provisions of this act shall be placed in the state treasury and credited to a special agency account to be designated as the mining and reclamation fund. This fund shall be available to the department by appropriation and shall be expended for the administration and enforcement of this act and for the reclamation and revegetation of land and the rehabilitation of water affected by any mining operations. Any unencumbered and any unexpended balance of this fund remaining at the end of any fiscal year shall not lapse but shall be carried forward for the purposes of this act until expended or until appropriated by subsequent legislative action.

History: En. Sec. 19, Ch. 325, L. 1973;
amd. Sec. 26, Ch. 441, L. 1975.

Amendments

The 1975 amendment deleted "strip" before "mining and reclamation fund" near the end of the first sentence; and made a minor change in style.

Compiler's Notes

The 1975 amendment included the subsection designation (1) at the beginning of this section, but there are no other subsections.

50-1053. Funds received by board—reclamation work by board—rehabilitation of unreclaimed lands. (1) The board may receive any federal funds, state funds, or any other funds for the reclamation of land affected by strip mining or underground mining. The board may have reclamation work done by its own employees or by employees of other governmental agencies, soil conservation districts, or through contracts with qualified persons.

(2) Any funds or any public works programs available to the board shall be used and expended to reclaim and rehabilitate lands that have been subjected to strip mining or underground mining that have not been reclaimed and rehabilitated in accordance with the standards of this act.

History: En. Sec. 20, Ch. 325, L. 1973;
amd. Sec. 27, Ch. 441, L. 1975.

Amendments

The 1975 amendment added "or underground mining" after "strip mining" in subsections (1) and (2).

50-1054. Reclamation of lands after bond forfeited. The board may reclaim, in keeping with the provisions of this act, any affected lands with respect to which a bond has been forfeited and to use moneys appropriated from the mining and reclamation fund for such purposes.

History: En. Sec. 21, Ch. 325, L. 1973;
amd. Sec. 28, Ch. 441, L. 1975.

Amendments

The 1975 amendment deleted "strip" before "mining and reclamation fund."

50-1055. Mandamus to compel enforcement of law—action for damage to water supply—damage from surface water—other remedies. (1) A resident of this state, with knowledge that a requirement of this act or a rule adopted under this act, is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that shall state the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed under the law of perjury.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce the requirement or rule, the resident may bring an action of mandamus in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or in the district court of the county in which the land is located. The court, if it finds that a requirement of this act or a rule adopted under this act, is not being enforced shall order the public officer or employee, whose duty it is to enforce the requirement or rule, to perform his duties. If he fails to do so, the public officer or employee shall be held in contempt of court and is subject to the penalties provided by law.

(3) An owner of an interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground source other than a subterranean stream having a permanent, distinct, and known channel, may sue an operator to recover damages for contamination, diminution, or interruption of the water supply, proximately resulting from strip mining or underground mining.

(a) Prima facie evidence of injury in a suit under this subsection is established by the removal of coal or disruption of overlying aquifer from designated "ground water areas" as prescribed in Title 89, chapter 29. If the area is not a designated "ground water area," a showing that the coal or overlying strata is an aquifer in that geographical location and that the coal or the overlying strata has been removed or disrupted shifts the burden to defendant (operator) to show that plaintiff's (owner's) water supply was not injured thereby.

(b) An owner of water rights adversely affected may file a complaint, detailing the loss in quality and quantity of his water, with the department. Upon receipt of this complaint the department shall:

(i) investigate the complaint using all available information including monitoring data gathered at the mine site;

(ii) require the defendant (operator) to install such monitoring wells or other practices that may be needed to determine the cause of water loss, if there is a loss, in terms of quantity or quality;

(iii) issue, within ninety (90) days, a written finding specifying the cause of the water loss, if there is a loss, in terms of quantity or quality;

(iv) order the mining operator in compliance with the Water Use Act to replace the water immediately on a temporary basis to provide the needed water and within a reasonable time replace the water in like

quality, quantity, and duration, if the loss is caused by the surface coal mining operation; and

(v) order the suspension of the operator's permit, for failure to replace the water, until such time as the operator provides substitute water.

(4) A servient tract of land is not bound to receive water contaminated by strip mining or underground mining on a dominant tract of land, and the owner of the servient tract may sue an operator to recover the damages proximately resulting from the natural drainage from the dominant tract of waters contaminated by strip mining or underground mining on the dominant tract.

(5) This section does not create, modify, or affect any right, liability, or remedy other than as expressly provided in this section.

History: En. Sec. 22, Ch. 325, L. 1973; amd. Sec. 1, Ch. 295, L. 1975; amd. Sec. 29, Ch. 441, L. 1975. composite section embodying the changes made by both amendments.

Compiler's Notes

This section was amended twice in 1975, once by Ch. 295 and once by Ch. 441. Neither amendatory act mentioned or included the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a

Amendments

Chapter 295, Laws of 1975, added subdivisions (3)(a) and (b).

Chapter 441, Laws of 1975, inserted the references to "underground mining" in subsections (3) and (4); and deleted "surface" before "water" and "waters" in subsection (4).

50-1056. Violation—civil penalty—injunction—misdemeanor. (1) A person or operator who violates any of the provisions of this act or rules or orders adopted under this act shall pay a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for the violation, and an additional civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each day during which a violation continues, and may be enjoined from continuing such violations as hereinafter provided in this section. These penalties shall be recoverable in any action brought in the name of the state of Montana by the attorney general in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or in the district court having jurisdiction of the defendant.

(2) The attorney general shall, upon the request of the commissioner, sue for the recovery of the penalties provided in this section for, and bring an action for a restraining order, temporary or permanent injunction, against an operator or other person violating or threatening to violate an order adopted under this act.

(3) A person who willfully violates any of the provisions of this act, or any determination or order adopted under this act which has become final is guilty of a misdemeanor and shall be fined not less than five hundred dollars (\$500) and not more than five thousand dollars (\$5,000). Each day on which a violation occurs constitutes a separate offense.

History: En. Sec. 23, Ch. 325, L. 1973.

50-1057. Procedure for hearings and appeals. All hearings and appeal procedures shall be in accordance with sections 82-4209 through 82-4217.

History: En. Sec. 24, Ch. 325, L. 1973.

Separability Clause

Section 25 of Ch. 325, Laws 1973 read "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clause

Section 26 of Ch. 325, Laws 1973 read "Sections 50-1018 through 50-1033, R. C. M. 1947, are repealed."

Temporary Provisions

Section 27 of Ch. 325, Laws 1973 read "Every operator shall within ninety

(90) days after the effective date of this act file with the department an application for a permit."

Section 28 of Ch. 325, Laws 1973 read "Ninety (90) days after the effective date of this act, the state shall proceed to cancel, according to their terms, all existing contracts entered into pursuant to chapter 245, Laws of Montana, 1967. If the contract does not provide according to its terms, for the cancellation, it shall be terminated and void within two hundred seventy (270) days from the effective date of this act."

Effective Date

Section 29 of Ch. 325, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 16, 1973.

CHAPTER 11—DREDGE MINING—PRESERVATION OF LANDS

(Repealed—Section 116, Chapter 428, Laws of 1973)

50-1101 to 50-1114. Repealed.

Repeal

Sections 50-1101 to 50-1114 (Secs. 1 to 14, Ch. 123, L. 1969), relating to dredge mining and preservation of lands, were repealed by Sec. 116, Ch. 428, Laws 1973.

Unconstitutionality

This act is repugnant to section 23, article V of the 1889 constitution, in that it purports to regulate sluice wash-

ing without mentioning that process in its title; and it violates the fourteenth amendment to the United States Constitution in that it exempts open pit mining, strip coal mining and certain other types of operations without valid reason for a distinction. *Sigety v. State Board of Health*, 157 M 48, 482 P 2d 574, distinguished in 158 M 197, 205, 490 P 2d 221, 226.

CHAPTER 12—RECLAMATION OF MINING LANDS

- Section 50-1201. Legislative observations and finding.
 50-1202. Purposes of act.
 50-1203. Definitions.
 50-1204. Administration—rules and regulations—employment of supervisors.
 50-1205. Investigations, research and experiments in reclamation.
 50-1206. Co-operation with other agencies—receipt and expenditure of funds.
 50-1207. Exploration license and development permit—duration and renewal—requirements.
 50-1208. Operating permit—fee—contents of application.
 50-1209. Reclamation plan and specific reclamation requirements.
 50-1210. Inspection of mining site—issuance of operating permit—modification of reclamation plan—succession to interest in uncompleted mining operation.
 50-1211. Performance bond.
 50-1212. Annual report of activities by permittee—annual fee.
 50-1213. Inspection to determine compliance with reclamation plan—rectification of deficiencies—board actions to reclaim disturbed lands.
 50-1214. Reasons for denial of permit.
 50-1215. Resubmission with new reclamation plan.
 50-1216. Administrative remedies—notice—parties.
 50-1219. Exemption of works performed prior to promulgation of rules and regulations.
 50-1220. Exemption of small miners—written agreement—noncompliance a misdemeanor.

- 50-1221. Information obtained from applications confidential—admissible in hearings or proceedings.
- 50-1221.1. Review of existing files.
- 50-1221.2. Release by waiver.
- 50-1222. Violation penalties.
- 50-1223. Exemption of operations on federal lands.
- 50-1224. Exemption of sample collectors.
- 50-1225. Notice of noncompliance—suspension of permits.
- 50-1226. Prior operating permits exempt—exploration licenses and development permits remain in effect.
- 50-1227. Hard-rock mining account.

50-1201. Legislative observations and finding. The extraction of mineral by mining is a basic and essential activity making an important contribution to the economy of the state and the nation. At the same time, proper reclamation of mined land and former exploration areas not brought to mining stage is necessary to prevent undesirable land and surface water conditions detrimental to the general welfare, health, safety, ecology, and property rights of the citizens of the state. Mining and exploration for minerals takes place in diverse areas where geological, topographical, climatic, biological and sociological conditions are significantly different, and reclamation specifications must vary accordingly. It is not practical to extract minerals or explore for minerals required by our society without disturbing the surface or subsurface of the earth and without producing waste materials, and the very character of many types of mining operations precludes complete restoration of the land to its original condition. The legislature finds that land reclamation as provided in this act will allow exploration for and mining of valuable minerals while adequately providing for the subsequent beneficial use of the lands to be reclaimed.

History: En. Sec. 1, Ch. 252, L. 1971.

Title of Act

An act requiring the licensing of persons engaged in mining exploration and related activities; requiring permits for the conduct of development, mining and

related activities; providing for the reclamation of explored, developed, and mined land; providing for the administration and enforcement of said act by the board of state lands and investments; and providing for an appeal procedure; and providing an effective date.

50-1202. Purposes of act. The purposes of this act are to provide: (i) that the usefulness, productivity and scenic values of all lands and surface waters involved in mining and mining exploration within the boundaries and lawful jurisdiction of the state will receive the greatest reasonable degree of protection and reclamation to beneficial use; (ii) authority for co-operation between private and governmental entities in carrying this act into effect; (iii) for the recognition of the recreational and aesthetic values of land as a benefit to the state of Montana; and (iv) priorities and values to the aesthetics of our landscape, waters and ground cover. Although both the need for and the practicability of reclamation will control the type and degree of reclamation in any specific instance, the basic objective will be to establish, on a continuing basis, the vegetative cover, soil stability, water condition and safety condition appropriate to any proposed subsequent use of the area.

History: En. Sec. 2, Ch. 252, L. 1971.

50-1203. Definitions. As used in this act, unless the context indicates otherwise, the following definitions apply:

(1) "Surface mining" means all or any part of the process involved in mining of minerals by removing the overburden and mining directly from the mineral deposits thereby exposed, including but not limited to open-pit mining of minerals naturally exposed at the surface of the earth, mining by the auger method, and all similar methods by which earth or minerals exposed at the surface are removed in the course of mining. Surface mining does not include the extraction of oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium or excavation or grading conducted for on-site farming, on-site road construction, or other on-site building construction.

(2) "Unit of surface-mined area" means that area of land and surface water included within an operating permit actually disturbed by surface mining during each 12-month period of time, beginning at the date of the issuance of the permit, and it comprises and includes the area from which overburden or minerals have been removed, the area covered by mining debris, and all additional areas used in surface mining or underground mining operations which by virtue of such use are thereafter susceptible to erosion in excess of the surrounding undisturbed portions of land.

(3) "Disturbed land" means that area of land or surface water disturbed, beginning at the date of the issuance of the permit, and it comprises that area from which the overburden or minerals have been removed and tailings ponds, waste dumps, roads, conveyor systems, leach dumps, and all similar excavations or covering resulting from the operation and which have not been previously reclaimed under the reclamation plan.

(4) "Abandonment of surface or underground mining" may be presumed when it is shown that continued operation will not resume.

(5) "Underground mining" means all methods of mining other than surface mining.

(6) "Person" means any person, corporation, firm, association, partnership, or other legal entity engaged in exploration for or development or mining of minerals on or below the surface of the earth.

(7) "Mineral" means any ore, rock, or substance, other than oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium, taken from below the surface or from the surface of the earth for the purpose of milling, concentration, refinement, smelting, manufacturing, or other subsequent use or processing or for stockpiling for future use, refinement, or smelting.

(8) "Exploration" means all activities conducted on or beneath the surface of lands resulting in material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other than mining for production and economic exploitation, as well as all roads made for the purpose of facilitating exploration, except as noted in 50-1220 and 50-1224.

(9) "Development" means all operations between exploration and mining.

(10) "Mining" commences at such time as the operator first mines ores or minerals in commercial quantities for sale, beneficiation, refining, or other processing or disposition or first takes bulk samples for metallurgical testing in excess of aggregate of 10,000 short tons.

(11) "Reclamation plan" means the operator's written proposal, as required and approved by the board, for reclamation of the land that will be disturbed, which proposal shall include, to the extent practical at the time of application for a developing or operating permit:

(a) a statement of the proposed subsequent use of the land after reclamation;

(b) plans for surface gradient restoration to a surface suitable for the proposed subsequent use of the land after reclamation is completed and the proposed method of accomplishment;

(c) the manner and type of revegetation or other surface treatment of disturbed areas;

(d) procedures proposed to avoid foreseeable situations of public nuisance, endangerment of public safety, damage to human life or property, or unnecessary damage to flora and fauna in or adjacent to the area;

(e) the method of disposal of mining debris;

(f) the method of diverting surface waters around the disturbed areas where necessary to prevent pollution of those waters or unnecessary erosion;

(g) the method of reclamation of stream channels and stream banks to control erosion, siltation, and pollution;

(h) such maps and other supporting documents as may be reasonably required by the department; and

(i) a time schedule for reclamation that meets the requirements of 50-1209.

(12) "Vegetative cover" means the type of vegetation, grass, shrubs, trees, or any other form of natural cover considered suitable at time of reclamation.

(13) "Board" means the board of land commissioners or such state employee or state agency as may succeed to its powers and duties under this act.

(14) "Department" means the department of state lands.

(15) "Small miner" means a person, firm, or corporation engaged in the business of mining who does not remove from the earth during any calendar year material in excess of 36,500 tons in the aggregate.

History: En. Sec. 3, Ch. 252, L. 1971; amd. Sec. 1, Ch. 281, L. 1974; amd. Sec. 13, Ch. 39, L. 1977; amd. Sec. 1, Ch. 423, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 39 and once by Ch. 423. Since the amendments do not appear to conflict, the code commissioner has

made a composite section embodying the changes made by both amendments.

Amendments

The 1974 amendment substituted "department" for "director" in subdivision (11)(h); substituted "board of land commissioners" for "Board of State Lands and Investments" in subdivision (13); and substituted the definition of "Department"

for definitions of "Director" and "administrator" in subdivision (14).

Chapter 39, Laws of 1977, made minor changes in phraseology, punctuation and style.

Chapter 423, Laws of 1977, substituted

"calendar year" for "twenty-four (24) hour period" in subdivision (15); substituted "36,500 tons" for "one hundred (100) tons" in subdivision (15); and made minor changes in phraseology, punctuation and style.

50-1204. Administration—rules and regulations—employment of supervisors. The board is charged with the responsibility of administering this act. In order to implement its terms and provisions, the board shall from time to time promulgate such rules and regulations as the board shall deem necessary. The board may delegate such powers, duties and functions to the department as it deems necessary for the performance of its duties as administrator of this act. The board shall employ experienced, qualified persons in the field of mined land reclamation, who for the purpose of this act, are hereinafter referred to as supervisors.

History: En. Sec. 4, Ch. 252, L. 1971;
amd. Sec. 2, Ch. 281, L. 1974.

Amendments

The 1974 amendment substituted "the department" in the third sentence for "its director and staff members."

50-1205. Investigations, research and experiments in reclamation. The board shall have the authority to conduct or authorize investigations, research, experiments and demonstrations in reclamation and to collect and disseminate nonconfidential information relating to mining.

History: En. Sec. 5, Ch. 252, L. 1971.

50-1206. Co-operation with other agencies—receipt and expenditure of funds. The board shall co-operate with other governmental and private agencies in this state and other states and agencies of the federal government, and may reasonably compensate them for any services the board requests that they provide. The board may receive federal funds, state funds, and any other funds and, within the limits imposed by the grant, expend them for reclamation of land affected by mining or exploration and for purposes enumerated in section 9 [50-1209] of this act.

History: En. Sec. 6, Ch. 252, L. 1971.

50-1207. Exploration license and development permit—duration and renewal—requirements. (1) Effective sixty (60) days after the date on which the board shall first promulgate its regulations as authorized by section 4 [50-1204] of this act, no person shall engage in exploration or development in the state without first obtaining an exploration license or development permit from the board to do so, such license or permit to be issued for a period of one (1) year from date of issue and to be renewable from year to year on application therefor filed at any time within the thirty (30) days next preceding the expiration of the current license or permit and payment of like fee as required for a new license or permit; provided that the applicant for renewal is not then held by the board to be in violation of any provision of this law. Such license or permit shall be subject to suspension and revocation as provided by this act.

(2) An exploration license shall be issued to any applicant therefor

who shall: (i) pay a fee of five dollars (\$5) to the board; (ii) agree to reclaim any surface area damaged by the applicant during exploration operations, all as may be reasonably required by the board, (iii) not be in default of any other reclamation obligation under this law.

(a) An application for an exploration license shall be made in writing, notarized and submitted to the department in duplicate upon forms prepared and furnished by it. The application shall include an exploration map or sketch in sufficient detail to locate the area to be explored and to determine whether significant environmental problems would be encountered. The department shall, by rules and regulations, determine the precise nature of such exploration map or sketch. The applicant must state what types of prospecting and excavation techniques will be employed in disturbing the land.

(b) Upon filing of any certificate of claim location as permitted by federal and state mining laws and regulations, the locator shall provide copies of said certificates to the board.

(c) Prior to the issuance of an exploration license, the applicant shall file with the department a reclamation and revegetation bond in a form and amount as determined by the department in accordance with section 50-1211.

(d) In the event that the holder of an exploration permit desires to mine or develop the area covered by the exploration license and has fulfilled all of the requirements for a development or operating permit, the department may allow the postponement of the reclamation of the acreage explored if that acreage is incorporated into the complete reclamation plan submitted with the application for a development or operating permit. Any land actually affected by exploration or excavation under an exploration license and not covered by the development or operating reclamation plan shall be reclaimed within two (2) years after the completion of exploration or abandonment of the site, in a manner acceptable to the department.

(3) An application for a development permit shall be made in writing, notarized and submitted to the department in duplicate upon forms prepared and furnished by it. An application shall contain the following:

- (a) a twenty-five dollar (\$25) application fee;
- (b) a description of the area within which development is to be conducted;
- (c) a suitable map or aerial photograph showing topographic, cultural and drainage features;
- (d) a statement of proposed development methods, i.e., drilling, trenching, etc., and the location of primary support roads and facilities;
- (e) an estimate of the acreage expected to be disturbed in the twelve (12) months following issue of the permit, together with a map of the general area of the development operations for a like period. If the board shall, on good cause, consider the operator's estimate of the quantity of surface to be disturbed to be more than twenty per cent (20%) below what the board considers correct in the circumstances, it may by order require the operator to increase the amount of his bond accordingly.

(f) a proposed reclamation plan for lands to be disturbed in the next twelve (12) months. Such plan must be approved by the department prior to the permit issuance;

(g) an affidavit, as may be required by the board, showing that any lands disturbed by exploration, development, or mining in the state of Montana by applicant within two years prior to the application for said permit is or is in course of being reclaimed in accordance with the provisions of this act; or submission of an affidavit and such supporting documents and evidence as may be required by the board showing that any lands disturbed by exploration, development, or mining by applicant in the state of Montana during the two (2) years prior to the application for said permit will be restored in accordance with the provisions of this act.

(h) a reclamation and revegetation bond in form and amount to be determined by the department in accordance with section 50-1211, prior to the issuance of a development permit.

(4) Upon receipt of a complete development application the department shall, within sixty (60) days, notify the applicant that the reclamation plan is or is not acceptable. If the plan is not acceptable the department shall notify the applicant, in writing, of the deficiencies. Failure of the department to so act within that period shall constitute approval of the application and the permit shall be issued promptly thereafter.

(5) Employees of persons holding a valid license or permit under this act shall be deemed included in and covered by such license or permit.

(6) Upon proper application by the holder of an exploration license or development permit, the board may excuse such holder from reclamation obligations with reference to any specified openings or excavations exposing geological indications or phenomena of especial interest, even though the licensee does not apply or have any intention to apply for development license or operating permit for the land in which such openings or excavations have been made.

History: En. Sec. 7, Ch. 252, L. 1971; amd. Sec. 3, Ch. 281, L. 1974.

Amendments

The 1974 amendment added the final sentence to subsection (1); deleted "unless the applicant shall have applied for and been issued a development or operating permit for the lands so damaged" from item (ii) in subsection (2); rewrote subdivision (2)(a) which read "Except as hereafter provided, the holder of such license shall not be compelled to disclose the area of his exploration operations, except where charged with a delinquency

in performing reclamation obligations hereunder"; added subdivisions (2)(c) and (2)(d); rewrote the first sentence of subsection (3) which read "A development permit shall be issued to any applicant therefor that shall meet the following requirements"; added the second sentence to subdivision (3)(f); added subdivision (3)(h); rewrote subsection (4) which read "Following approval of a development plan, the operator shall be required to file a performance bond in accordance with provisions of this act"; and made minor changes in phraseology.

50-1208. Operating permit—fee—contents of application. (1) Effective sixty (60) days after the date on which the board shall first promulgate its regulations as authorized by section 4 [50-1204] of this act, no person shall engage in mining in the state without first obtaining an operating permit from the board to do so. A separate operating permit shall

be required for each mine complex. Any person, prior to receiving an operating permit from the board, must pay the basic permit fee of twenty-five dollars (\$25) and must submit an application on a form provided by the board, which shall contain the following information and any other pertinent required data by the rules and regulations:

(a) Name and address of the operator and, if a corporation or other business entity, the name and address of its principal officers, partners and the like and its resident agent for service of process, if required by law;

(b) Minerals expected to be mined;

(c) A proposed reclamation plan;

(d) Expected starting date of mining;

(e) A map showing the specific area to be mined and the boundaries of the land which will be disturbed; topographic detail; the location and names of all streams, roads, railroads, and utility lines on or immediately adjacent to the area; location of proposed access roads to be built and the names and addresses of the surface and mineral owners of all lands within the mining area, to the extent known to applicant;

(f) Types of access roads to be built and manner of reclamation of road sites on abandonment;

(g) A plan of mining which will provide, within limits of normal operating procedures of the industry, for completion of mining and associated land disturbances.

(h) A reclamation and revegetation bond in form and amount to be determined by the department in accordance with section 50-1211.

History: En. Sec. 8, Ch. 252, L. 1971; Amendments
amd. Sec. 4, Ch. 281, L. 1974.

The 1974 amendment added subdivision
(1)(h).

50-1209. Reclamation plan and specific reclamation requirements. (1) The reclamation plan shall provide that reclamation activities, particularly those relating to control of erosion, to the extent feasible, shall be conducted simultaneously with mining and in any case shall be initiated promptly after completion or abandonment of mining on those portions of the mine complex that will not be subject to further disturbance by the mining operation. In the absence of an order by the board providing a longer period, the plan shall provide that reclamation activities shall be completed not more than 2 years after completion or abandonment of mining on that portion of mine complex.

(2) In the absence of emergency or suddenly threatened or existing catastrophe, an operator may not depart from an approved plan without previously obtaining from the department written approval of his proposed change.

(3) Provision shall be made to avoid accumulation of stagnant water in the mined area which may serve as a host or breeding ground for mosquitoes or other disease-bearing or noxious insect life.

(4) All final grading shall be made with nonnoxious, nonflammable, noncombustible solids unless approval has been granted by the board for a supervised sanitary fill.

(5) Where mining has left an open pit exceeding 2 acres of surface area and the composition of the floor or walls of the pit are likely to cause formation of acid, toxic, or otherwise pollutive solutions (hereinafter "objectionable effluents") on exposure to moisture, the reclamation plan shall include provisions which adequately provide for:

(a) insulation of all faces from moisture or water contact by covering to a depth of 2 feet or more with material or fill not susceptible itself to generation of objectionable effluents;

(b) processing of any objectionable effluents in the pit before their being allowed to flow or be pumped out of it to reduce toxic or other objectionable ratios to a level considered safe to humans and the environment by the board;

(c) drainage of any objectionable effluents to settling or treatment basins when the objectionable effluents must be reduced to levels considered safe by the board before release from the settling basin; or

(d) absorption or evaporation of objectionable effluents in the open pit itself; and

(e) prevention of entrance into the open pit by persons or livestock lawfully upon adjacent lands by fencing, warning signs, and such other devices as may reasonably be required by the board.

(6) Provisions for vegetative cover shall be required in the reclamation plan if appropriate to the future use of the land as specified in the reclamation plan.

(7) The reclamation plan shall provide for the reclamation of all disturbed land. Proposed reclamation need not reclaim the areas to a better condition or different use than that which existed prior to development or mining.

(8) A reclamation plan shall be approved by the board if it adequately provides for the accomplishment of the activities specified in this section.

History: En. Sec. 9, Ch. 252, L. 1971; amd. Sec. 5, Ch. 281, L. 1974; amd. Sec. 14, Ch. 39, L. 1977.

Amendments

The 1974 amendment substituted "department" for "supervisor or director" in subsection (b); inserted "To the extent

practical" at the beginning of subsection (g); and made a minor change in punctuation.

The 1977 amendment redesignated former subsections (a) through (h) as subsections (1) through (8); and made minor changes in phraseology, punctuation and style.

50-1210. Inspection of mining site—issuance of operating permit—modification of reclamation plan—succession to interest in uncompleted mining operation. (1) (a) Unless the time period is extended under the provisions of [subsection (1)(b) of this section], the board shall either issue an operating permit to the applicant or return any incomplete or inadequate application, along with a description of the deficiencies, within 60 days of receipt of the complete application and reclamation plan by the board and receipt of the permit fee.

(b) (i) Prior to issuance of a permit, the department shall inspect the site. If the site is not accessible due to extended adverse weather con-

ditions, the department may extend the 60-day time period, by not more than 180 days, to allow inspection of the site and reasonable review. The department must serve written notice of extension upon the applicant in person or by certified mail, and any such extension is subject to appeal to the board in accordance with the Montana Administrative Procedure Act.

(ii) If the department determines that additional time is needed to review the application and reclamation plan for a major operation, the department and the applicant shall negotiate to extend the 60-day period by not more than 365 days in order to permit reasonable review.

(c) Failure of the board to act upon a complete application within the period prescribed or any extension thereof constitutes approval of the application and the permit shall be issued promptly thereafter.

(2) The operating permit shall be granted for the period required to mine the land covered by the plan and shall be valid until the surface or underground mining authorized by the permit is completed or abandoned, unless the permit is suspended or revoked by the board as provided in this act. The operating permit shall provide that the reclamation plan may be modified by the board, upon proper application of the permittee, or department, after timely notice and opportunity for hearing, at any time during the term of the permit and for any of the following reasons:

(a) to modify the requirements so they will not conflict with existing laws;

(b) when the previously adopted reclamation plan is impossible or impracticable to implement and maintain;

(c) when significant environmental problem situations are revealed by field inspection.

(3) When one operator succeeds to the interest of another in any uncompleted mining operation by sale, assignment, lease, or otherwise, the board may release the first operator from the duties imposed upon him by this act as to such operation, provided that both operators have complied with the requirements of this act and the successor operator assumes the duty of the former operator to complete the reclamation of the land, in which case the board shall transfer the permit to the successor operator upon approval of the successor operator's bond as required under this act.

(4) This act shall not apply to applications filed with the department prior to January 1, 1977, and for which an agreement has been signed, and for so long as it continues, extending the 60-day review period presently contained in 50-1210.

History: En. Sec. 10, Ch. 252, L. 1971; amd. Sec. 6, Ch. 281, L. 1974; amd. Sec. 1, Ch. 427, L. 1977.

Amendments

The 1974 amendment substituted "the department" for "a supervisor" in the first sentence; increased the processing period from 35 to 60 days in the second

sentence; inserted "complete" before "application" near the beginning of the second sentence; inserted "or revoked" after "suspended" in the first sentence of the second paragraph; inserted "or department" after "application of the permittee" in the second sentence of the second paragraph; and rewrote item (c) in the second paragraph which read "The operator and

the supervisor mutually agreed, in the field, to temporarily modify the reclamation plan, pending final approval by the board."

The 1977 amendment substituted subsection (1) for a former first paragraph which read: "Upon receipt of an application for an operating permit the mining site shall be inspected by the department. Within sixty (60) days of receipt of the complete application and reclamation plan by the board and receipt of the permit fee, the board shall either issue an operating permit to the appli-

cant or return any incomplete or inadequate application to the applicant along with a description of the deficiencies. Failure of the board to so act within that period shall constitute approval of the application and the permit shall be issued promptly thereafter"; designated the former second paragraph including subdivisions (a) through (c) as subsection (2); designated the former last paragraph as subsection (3); added subsection (4); and made minor changes in punctuation and style.

50-1211. Performance bond. The applicant shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in the penal sum to be determined by the department of not less than two hundred dollars (\$200) nor more than twenty-five hundred dollars (\$2,500) for each acre or fraction thereof of the disturbed area, conditioned upon the faithful performance of the requirements of this act and the rules of the board. In lieu of such bond the applicant may file with the board a cash deposit, an assignment of a certificate of deposit, or other surety acceptable to the board. Regardless of the above limits, the bond shall not be less than the estimated cost to the state to complete the reclamation of the disturbed land. A public or governmental agency shall not be required to post a bond under the provisions of this act. A blanket performance bond covering two (2) or more operations may be accepted by the board. Such blanket bond shall adequately secure the estimated total number of acres of disturbed land. When determined by the department that the set bonding level of a permit or license does not represent the present costs of reclamation, the department may modify the bonding requirements of that permit or license.

No bond filed in accordance with the provisions of this act shall be released by the department until the provisions of this act, the rules adopted pursuant thereto and this reclamation plan have been fulfilled.

History: En. Sec. 11, Ch. 252, L. 1971; amd. Sec. 7, Ch. 281, L. 1974.

Amendments

The 1974 amendment rewrote this section which read "Concurrently with issue of a permit, the board may provide the permittee with a list of corporate sureties acceptable to the board from whom the performance bond hereafter required can be obtained.

"Upon receipt of a permit the permittee, other than a public or governmental agency, shall not commence operation until the permittee has deposited with the board an acceptable performance bond on forms prescribed and furnished by the board. This performance bond shall be a corporate surety bond executed in favor of the board by a corporation authorized to do a surety business in the state of Montana and approved by the board. The bond shall be filed and maintained in an

amount equal to the estimated cost of completing the reclamation plan for the area to be developed or mined during the next twelve (12) month period and any previously developed or mined area for which a permit has been issued and on which the reclamation has not been satisfactorily completed and approved. The board shall have the authority to determine the amount of the bond that shall be required, and may refuse any bond not deemed adequate. In no case shall the amount of the bond be more than five hundred dollars (\$500) per acre of the area above described or fraction thereof.

"The bond shall be conditioned upon the faithful performance of the requirements set forth in this chapter and of the rules and regulations adopted pursuant thereto.

"In lieu of the surety bond required by this section, the permittee may file with the board a cash deposit, negotiable securities acceptable to the board, or an

assignment of a savings account in a Montana bank on an assignment form prescribed by the board.

"Liability under the bond shall be maintained as long as reclamation is not completed in compliance with the approved reclamation plan unless released prior thereto as hereinafter provided. Liability under the bond may be released only upon written notification from the board. Notification shall be given upon completion of compliance or acceptance by the board of a substitute bond. In no event shall the liability of the permittee or surety exceed the amount of the surety bond required by this section.

"A public or governmental agency shall not be required to post a bond under the terms of this chapter.

"A blanket performance bond covering two (2) or more operations may be accepted by the board in lieu of separate bonds for each separate operation.

"If adequate proof exists that a bond is unobtainable for any reason other than lack of fiscal responsibility on the operator's part from any source, the licensee's

obligation to supply such bond shall be suspended until such time as a source for bonding is obtained.

"Notwithstanding the foregoing, an applicant for a permit who shall, as part of his application, submit his duly acknowledged certificate that he will not, in the course of his entire operations in the state of Montana, exceed five (5) acres in aggregate of disturbed land unreclaimed, shall not be required to show financial capability to procure a performance bond as required by this section or thereafter to procure a corporate surety bond or make any in lieu deposit with the board therefor. Relief from such surety requirements shall in no wise relieve the permittee from any direct reclamation obligations hereunder. On acceptable showing of hardship on the part of an applicant, the board may relieve any permittee within the classification first described in this paragraph from such technical showings under sections 3 [50-1203] (11) and 8 [50-1208] which the board considers may be waived without injury to the interest of the public."

50-1212. Annual report of activities by permittee—annual fee. Within thirty (30) days after completion or abandonment of operations on an area under permit or within thirty (30) days after each anniversary date of the permit, whichever is earlier, or at such later date as may be provided by rules and regulations of the board and each year thereafter until reclamation is completed and approved, the permittee shall pay the annual fee of twenty-five dollars (\$25) and shall file a report of activities completed during the preceding year on a form prescribed by the board, which report shall:

- (a) Identify the permittee and the permit number;
- (b) Locate the operation by subdivision, section, township and range, and with relation to the nearest town or other well-known geographic feature;
- (c) Estimate acreage to be newly disturbed by operation in the next twelve (12) month period; and
- (d) Update any maps previously submitted or specifically requested by the board. Such maps shall show:
 - (1) The permit area;
 - (2) The unit of disturbed land;
 - (3) The area to be disturbed during the next twelve (12) month period;
 - (4) If completed, the date of completion of operations;
 - (5) If not completed, the additional area estimated to be further disturbed by the operation within the following permit year; and
 - (6) The date of beginning, amount and current status of reclamation performed during the previous twelve (12) months.

History: En. Sec. 12, Ch. 252, L. 1971.

50-1213. Inspection to determine compliance with reclamation plan—rectification of deficiencies—board actions to reclaim disturbed lands. Following receipt of the permittee's report, and at any other reasonable time the board may elect, the board shall cause the permit area to be inspected to determine if the permittee has complied with the reclamation plan and the board's rules and regulations.

The permittee shall proceed with reclamation as scheduled in his approved reclamation plan. Following written notice by the board noting deficiencies, the permittee shall commence action within thirty (30) days to rectify these deficiencies and shall diligently proceed until the deficiencies are corrected; provided, that deficiencies that also violate other laws that require earlier rectification shall be corrected in accordance with the applicable time provisions of such laws. The board may extend performance periods referred to in this section and in section 9 [50-1209] of this act, for delays clearly beyond the permittee's control, but only when the permittee is, in the opinion of the board, making every reasonable effort to comply.

Within thirty (30) days after notification by the permittee and when in the judgment of the board reclamation of a unit of disturbed land area is properly completed, the permittee shall be notified in writing and his bond on said area shall be released or decreased proportionately to the acreage included within the bond coverage.

If reclamation of disturbed land is not pursued in accordance with the reclamation plan and the permittee has not commenced action to rectify deficiencies within thirty (30) days after notification by the board, or if reclamation is not properly completed in conformance with the reclamation plan within two (2) years after completion or abandonment of operation on any fraction of the permit area, or such longer period as may have been authorized hereunder, or if, after default by the permittee, the surety either refuses or fails to perform the work to the satisfaction of the board within the time required therefor, the board may, with the staff, equipment and material under its control, or by contract with others, take such actions as are necessary for required reclamation of the disturbed lands. Such work shall be let on the basis of competitive bidding. The board shall keep a record of all necessary expenses incurred in carrying out the work or activity authorized under this section, including a reasonable charge for the services performed by the state's personnel and the state's equipment and materials utilized.

The board shall notify the permittee and his surety by order. The order shall state the amount of necessary expenses incurred by the board in reclaiming the disturbed land and a notice that the amount is due and payable to the board by the permittee and the surety. If the amount specified in the order is not paid within thirty (30) days after receipt of the notice, the attorney general, upon request of the board, shall bring an action on behalf of the state in district court. The surety shall be liable to the state to the extent of the bond; the permittee shall be liable for the remainder of the cost.

In addition to the other liabilities imposed by this act, failure to commence action to remedy specific deficiencies in reclamation within thirty

(30) days after notification by the board or failure to satisfactorily complete reclamation work on any segment of the permit area within two (2) years, or such longer period as the board may permit on permittee's application therefor, or on the board's own motion, after completion or abandonment of operations on any segment of the permit area shall constitute sufficient grounds for cancellation of a permit or license and refusal to issue another permit or license to the applicant; provided, however, that such action shall not be effected while an appeal is pending from any ruling requiring the same.

History: En. Sec. 13, Ch. 252, L. 1971; amd. Sec. 8, Ch. 281, L. 1974.

mittee shall be liable for the remainder of the cost" to the end of the fifth paragraph.

Amendments

The 1974 amendment added "the per-

50-1214. Reasons for denial of permit. A permit may be denied for any of the following reasons:

- (a) The plan of development, mining, or reclamation conflicts with the state water and air purification standards;
- (b) The reclamation plan does not provide an acceptable method for accomplishment of reclamation as required by this act.

A denial of a permit shall be in writing and state the reasons therefor.

History: En. Sec. 14, Ch. 252, L. 1971.

50-1215. Resubmission with new reclamation plan. A permit may be denied and returned to the applicant with a request that the application be resubmitted with a different plan for reclamation. The person making application for a permit may then resubmit to the board a new plan for reclamation.

History: En. Sec. 15, Ch. 252, L. 1971.

50-1216. Administrative remedies—notice—parties. (1) Upon receipt of an application for an operating permit, the department shall provide notice of the application by publication in a newspaper of general circulation in the area to be affected by the operation. The notice shall be published once a week for 3 successive weeks.

(2) All hearings and appeal procedures shall be in accordance with the Administrative Procedure Act. Any person whose interests may be adversely affected as a result of an action taken pursuant to this act may become a party to any proceeding held hereunder upon a showing that such person is capable of adequately representing the interests claimed.

(3) As used in this section, "person" means any individual, corporation, partnership, or other legal entity.

History: En. Sec. 16, Ch. 252, L. 1971; amd. Sec. 9, Ch. 281, L. 1974; amd. Sec. 1, Ch. 313, L. 1975; amd. Sec. 2, Ch. 427, L. 1977.

Amendments

The 1974 amendment rewrote this section which read "A licensee, permittee or applicant who has been aggrieved by any decision of the board shall have the

right of appeal to an appeals board comprised of the following: one (1) member of the fish and game department; two (2) qualified mining engineers to be appointed by the governor, at least one (1) of whom shall not be an employee of the state or any agency or arm thereof; one (1) member from the state department of agriculture; one (1) member of the department of health; and one (1) member

from the state department of planning and economic development; and one (1) member from the legal staff of the attorney general.

"The appeal shall be instituted by filing a petition with the appeals board within thirty (30) days after the denial of the permit. The petition shall contain a statement of the reasons for which the petitioner is aggrieved, and after reasonable notice the petitioner or his attorney or agent shall be afforded a hearing before the appeals board thereon.

"Within fifteen (15) days after the hearing, the appeals board shall notify the

petitioner in writing of its decision and the reasons therefor."

The 1975 amendment added the second sentence.

The 1977 amendment inserted subsection (1); designated the former section as subsection (2); and added subsection (3).

Effective Date

Section 3 of Ch. 427, Laws 1977 provided the act should be effective upon its passage and approval. Approved April 19, 1977.

50-1217, 50-1218. Repealed.

Repeal

Sections 50-1217 and 50-1218 (Secs. 17, 18, Ch. 252, L. 1971), relating to judicial

review of decisions of the appeals board, were repealed by Sec. 14, Ch. 281, Laws of 1974.

50-1219. Exemption of works performed prior to promulgation of rules and regulations. No provision of this act shall be applicable to any exploration or mining work performed prior to the date of promulgation of the director's rules and regulations pursuant to section 4 [50-1204] of this act.

History: En. Sec. 19, Ch. 252, L. 1971.

50-1220. Exemption of small miners—written agreement—noncompliance a misdemeanor. No provisions of this act shall apply to any small miner when the small miner annually agrees in writing, (1) That he shall not pollute or contaminate any stream; and

(2) That he shall provide protection for human and animal life through the installation of bulkheads installed over safety collars and the installation of doors on tunnel portals; and

(3) He shall not conduct a mining operation which will result in more than five (5) acres of the earth's surface being disturbed and unreclaimed, and provides a map locating his mining operations. Such map shall be to a size and scale as determined by the department.

Failure to comply with the regulations stipulated in this section will constitute a misdemeanor, and this offense will subject the owners, and/or operators of said project to a fine of not less than ten dollars (\$10) nor more than one hundred dollars (\$100), payable to the department of revenue of the state of Montana, or any board, commission, or person authorized to collect said fine.

History: En. Sec. 20, Ch. 252, L. 1971; amd. Sec. 15, Ch. 391, L. 1973; amd. Sec. 10, Ch. 281, L. 1974.

Amendments

The 1973 amendment substituted "de-

partment of revenue" for "board of equalization" in the final paragraph.

The 1974 amendment inserted "annually" before "agrees in writing" in the first sentence of the section; and added "and provides * * * by the department" to the end of subdivision (3).

50-1221. Information obtained from applications confidential—admissible in hearings or proceedings. Any and all information obtained by

the board or by the director or his staff by virtue of applications for exploration licenses, and all information obtained from small miners, is confidential between the board and the applicant, except as to the name of the applicant and the county of proposed operation. Provided that all activities conducted subsequent to exploration and other associated facilities shall be public information and conducted under a development or operating permit. It is further provided that any information obtained by the board or by the director or his staff by virtue of such applications is properly admissible in any hearing conducted by the director, the board, appeals board or in any judicial proceeding to which the director and the applicant are parties and is not confidential when a violation of the act or rules has been determined by the department or by judicial order. Failure to comply with the secrecy provisions of this act shall be punishable by a fine of up to one thousand dollars (\$1,000).

History: En. Sec. 21, Ch. 252, L. 1971; amd. Sec. 1, Ch. 37, L. 1975.

Amendments

The 1975 amendment substituted "for exploration licenses, and all information obtained from small miners" for "for licenses or permits"; added "except as to the name of the applicant and the county of proposed operation" to the first sen-

tence; inserted the second sentence; added "and is not confidential when a violation of the act or rules has been determined by the department or by judicial order" at the end of the third sentence; substituted "one thousand dollars (\$1,000)" for "ten thousand dollars (\$10,000) or one (1) year in jail"; and made minor changes in phraseology.

50-1221.1. Review of existing files. Existing departmental files shall be reviewed and their contents shall be segregated and available for public inspection to the same extent as new files under section 50-1221.

History: En. 50-1221.1 by Sec. 2, Ch. 37, L. 1975.

Title of Act

An act removing the imposition of se-

crecy from certain information submitted to the department of state lands under the act providing for reclamation of lands disturbed by hard rock mining by amending section 50-1221, R. C. M. 1947.

50-1221.2. Release by waiver. An applicant may release the board and department from the confidentiality requirements of this act by notarized waiver to that effect on forms to be provided by the department.

History: En. 50-1221.2 by Sec. 3, Ch. 37, L. 1975.

50-1222. Violation penalties. (1) A person who violates any of the provisions of this act or rules or orders adopted under this act shall pay a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for the violations, and an additional civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each day during which a violation continues, and may be enjoined from continuing such violations as hereinafter provided in this section. These penalties shall be recoverable in any action brought in the name of the state of Montana by the attorney general in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or in the district court having jurisdiction of the defendant.

(2) The attorney general shall, upon the request of the department, sue for the recovery of the penalties provided in this section for, and bring an action for a restraining order, temporary or permanent injunction, against an operator or other person violating or threatening to violate an order adopted under this act.

History: En. Sec. 22, Ch. 252, L. 1971; amd. Sec. 11, Ch. 281, L. 1974.

tion which made violation of the act a misdemeanor punishable by a fine of up to \$1,000 or imprisonment in the county jail for up to six months or both.

Amendments

The 1974 amendment rewrote this sec-

50-1223. Exemption of operations on federal lands. This act shall not be applicable to operations on certain federal lands as specified by the board, provided it is first determined by the board that federal law, or regulations issued by the federal agency administering such land, impose controls for reclamation of said lands substantially equal to or greater than those imposed by this act.

History: En. Sec. 23, Ch. 252, L. 1971.

50-1224. Exemption of sample collectors. This act shall not be applicable to any person or persons collecting rock samples as a hobby or when the collection of rocks and minerals is offered for sale in any amount not exceeding one hundred dollars (\$100) per year.

History: En. Sec. 24, Ch. 252, L. 1971.

this act that are severable from the invalid applications."

Separability Clause

Section 25 of Ch. 252, Laws 1971 read "The provisions of this act are severable, and if any part or provision thereof shall be held void in decision of the court so holding shall not affect or impair any of the remaining parts of the provisions of

Effective Date

Section 26 of Ch. 252, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 9, 1971.

50-1225. Notice of noncompliance—suspension of permits. If any of the requirements of this act or the rules or the reclamation plan have not been complied with within the time limits set by the department or board or by this act, the department shall serve a notice of noncompliance on the licensee or permittee, or where found necessary, the commissioner shall order the suspension of the permit. The notice or order shall be handed to the licensee or permittee in person or served by registered mail addressed to the permanent address shown on the application for a permit. The notice of noncompliance shall specify in what respects the operator has failed to comply with this act, the rules or the reclamation plan. If the licensee or permittee has not complied with the requirements set forth in the notice of noncompliance or order of suspension within the time limits set therein the permit may be revoked by order of the board and the performance bond forfeited to the department.

History: En. 50-1225 by Sec. 12, Ch. 281, L. 1974.

amending sections 50-1203, 50-1204, 50-1207, 50-1208, 50-1209, 50-1210, 50-1211, 50-1213, 50-1216, 50-1220, 50-1222; and repealing sections 50-1217, 50-1218, R. C. M. 1947.

Title of Act

An act for the general revision of the laws relating to hard rock mining by

50-1226. Prior operating permits exempt—exploration licenses and development permits remain in effect. The provisions of this act shall not apply to any operating permit issued pursuant to chapter 252 of the Laws of 1971. Exploration licenses and development permits obtained pursuant to chapter 252 of the Laws of 1971 shall remain in effect until the date of renewal, unless revoked or suspended in accordance with that act.

History: En. 50-1226 by Sec. 13, Ch. 281, L. 1974. **Repealing Clause**
 Section 14 of Ch. 281, Laws 1974 read "Sections 50-1217 and 50-1218, R. C. M. 1947, are repealed."

50-1227. Hard-rock mining account. All fees, fines, penalties, and other uncleared moneys which have been or will be paid to the department of state lands under the provisions of chapter 12, Title 50, R.C.M. 1947, shall be placed in the earmarked revenue fund in the state treasury and credited to a special account to be designated as the hard-rock mining and reclamation account. This account shall be available to the department by appropriation and shall be expended for the research, reclamation and revegetation of land and the rehabilitation of water affected by any mining operations. Any unencumbered and any unexpended balance of this account remaining at the end of a fiscal year shall not lapse but shall be carried forward for the purposes of this act until expended or until appropriated by subsequent legislative action.

History: En. 50-1227 by Sec. 1, Ch. 29, L. 1977. **Effective Date**
 Section 2 of Ch. 29, Laws 1977 provided the act should be effective on its passage and approval. Approved March 14, 1977.

CHAPTER 13—NOTICE TO LANDOWNER OF SURFACE OPERATIONS

- Section 50-1301. Short title.**
50-1302. Prospectors and miners to ascertain ownership of land.
50-1303. Written notice and approval required before commencement of operations.
50-1304. Discovery pits on federal lands exempt.
50-1305. Operations pursuant to prospecting permits or other agreements exempt.
50-1306. Violation a misdemeanor—immunity of landowner.

50-1301. Short title. This act may be referred to as "The Landowner Notification Act."

History: En. Sec. 1, Ch. 335, L. 1971. the owner of the land surface in advance of any operations which will disturb the surface of such land and obtain authorization to operate thereon.
Title of Act
 An act requiring prospectors, miners, or other persons in this state to advise

50-1302. Prospectors and miners to ascertain ownership of land. All prospectors for minerals, miners, or other persons contemplating surface disturbance by mechanical equipment other than hand tools on lands within the state of Montana are required to ascertain the ownership and possessory right of any land before performing any such operations

causing surface disturbance, such as road or trail building or any other work disturbing the surface on such land.

History: En. Sec. 2, Ch. 335, L. 1971.

50-1303. Written notice and approval required before commencement of operations. The land or surface of land not owned in fee by such person may not be disturbed in any manner until the owner or manager of the surface of said land, and the owner of a possessory right to said land, is given notice in writing, accompanied by a map showing the specific locations involved, of such person's intent or desire to enter upon such land which will sufficiently disclose the plan of work and operations, including contemplated measures for the protection and restoration of the land and waters, to enable the owner or manager of the land and any person holding a possessory right to such land to evaluate the extent of disturbance contemplated and the effectiveness and sufficiency of the protection and restoration measures planned.

(a) Before commencement of any work or operations on any such lands, such person must first obtain from the surface owner of private land specific written approval of the proposed work or operations.

(b) In the case of city, county, state, or federally owned lands, such person must first obtain the authorization or permit, if any, required by the applicable law and the regulations of the governmental agency or board charged by law with the administration or management of the surface of such land.

History: En. Sec. 3, Ch. 335, L. 1971.

50-1304. Discovery pits on federal lands exempt. Discovery pits which may be required to locate a mining claim on federal lands open to mineral entry, when excavated entirely by hand methods with hand tools, are exempt from the operation of this act.

History: En. Sec. 4, Ch. 335, L. 1971.

50-1305. Operations pursuant to prospecting permits or other agreements exempt. The provisions of this act shall not apply where operations upon land are performed in accordance with the terms of a prospecting permit or a lease covering any mineral interest in said land or other valid agreements authorizing such operations which are in full force and effect.

History: En. Sec. 5, Ch. 335, L. 1971;
amd. Sec. 1, Ch. 194, L. 1973.

Amendments

The 1973 amendment deleted "or by

the owner of one hundred per cent (100%) of the rights to any mineral interest upon the land in which such mineral ownership is vested" from the end of the section.

50-1306. Violation a misdemeanor—immunity of landowner. Any work done in violation of this act is punishable as a misdemeanor and each day of violation shall constitute a separate offense. The owner or lessor shall not be liable for injury to any person on either owned or leased land.

History: En. Sec. 6, Ch. 335, L. 1971.

CHAPTER 14—STRIP MINED COAL CONSERVATION

Section 50-1401.	Short title.
50-1402.	Policy and purposes of act.
50-1403.	Definitions.
50-1404.	Approved strip-mining plan required—effective period.
50-1405.	Review of strip mining plan by department—failure to review—procedures—modification of plan.
50-1406.	Appeal on disapproval of plan—hearing—rules to prevent waste of coal.
50-1407.	Civil penalty for operation without approved plan—noncompliance with plan—violation of rule as misdemeanor.
50-1408.	Procedure for hearings and appeals.
50-1409.	Deposition of fines.

50-1401. Short title. This act shall be known and may be cited as "The Strip Mined Coal Conservation Act."

History: En. Sec. 1, Ch. 220, L. 1973.

Title of Act

An act providing for the conservation of strippable and marketable coal, and prohibiting the waste thereof; providing

for the submission of strip mining plans, to the department of state lands; assigning duties to the state board of land commissioners; providing penalties; and providing an effective date.

50-1402. Policy and purposes of act. (1) Recognizing the importance of natural resources to the welfare of present and future generations of the people of Montana, it is declared to be the public policy in providing for the orderly development of coal resources through strip mining to assure the wise use and to prevent the waste of coal.

(2) It is the purpose of this act:

(a) to vest in the department the authority to review strip mining plans and either approve or disapprove such plans for the purpose of preventing waste; and

(b) to vest in the board the authority to adopt rules to prohibit waste resulting from strip mining operations.

History: En. Sec. 2, Ch. 220, L. 1973.

50-1403. Definitions. Unless the context requires otherwise, in this act:

(1) "Board" means the state board of land commissioners.

(2) "Department" means the department of state lands.

(3) "Strip mining" means all or any part of the process followed in the production of coal by the open cut method including mining by the auger method or any similar method which penetrates a coal deposit and removes coal directly through a series of openings made by a machine which enters the deposit from a surface excavation, or any other mining method or process in which the strata or overburden is removed or displaced in order to recover the coal.

(4) "Overburden" means all of the earth and other materials which lie above a natural coal deposit and also means such earth and other material after removal from their natural state in the process of strip mining.

(5) "Strippable coal" means that coal which can be removed through strip mining methods adaptable to the location that coal is being strip mined or is planned to be strip mined.

(6) "Marketable coal" means strippable coal that is economically feasible to mine and is fit for sale in the usual course of trade.

(7) "Waste" means the nonremoval or nonutilization of strippable and marketable coal by an operation, provided that the nonremoval or nonutilization of strippable and marketable coal in accordance with reclamation standards established by the department shall not be considered waste.

(8) "Person" means a person, partnership, corporation, association or other legal entity.

(9) "Operation" means any person engaged in strip mining who removes more than ten thousand (10,000) cubic yards of coal or overburden.

(10) "Operator" means a person that conducts an operation.

(11) "Strip mining plan" means the planned course of conduct of a strip mining operation to include plans for the removal and utilization of strippable and marketable coal located within the area planned to be mined.

History: En. Sec. 3, Ch. 220, L. 1973.

50-1404. Approved strip-mining plan required—effective period. (1) No operator may engage in strip mining without first obtaining approval of a strip mining plan from the department as provided for in 50-1405, as amended.

(2) Approved strip-mining plans shall be effective for 5 years from the date the plan is approved, with annual reports to the department, as prescribed in 50-1039(2), in which the operator indicates whether any waste has occurred in the past year or is expected to occur in the forthcoming year.

History: En. Sec. 4, Ch. 220, L. 1973; amd. Sec. 15, Ch. 39, L. 1977; amd. Sec. 4, Ch. 352, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 39 and once by Ch. 352. The code commissioner has made a composite section embodying some, but not all, the changes made by both amendments.

Amendments

Chapter 39, Laws of 1977, substituted "1 year from the date the plan is approved" at the end of subsection (2) for "two (2) years from the date of commencing the operation or one (1) year from the date the plan is approved, which-

ever occurs first"; and made minor changes in phraseology and style.

Chapter 352, Laws of 1977, rewrote subsection (2) which read: "Approved strip mining plans shall be effective for two (2) years from the date of commencing the operation or one (1) year from the date the plan is approved, whichever occurs first."

Repealing Clause

Section 5 of Ch. 352, Laws 1977 read "Section 50-1049, R. C. M. 1947, is repealed."

Effective Date

This section became effective March 8, 1974. See Effective Date note following sec. 50-1409.

50-1405. Review of strip mining plan by department—failure to review—procedures—modification of plan. (1) Upon submission of a strip mining plan to the department, the department shall review the plan for

the purpose of determining whether waste will occur. The department may require an operator to submit any information it deems necessary for review of the strip mining plan to determine whether waste will occur and may make inspections and investigations it deems necessary for the review. The department shall either approve or disapprove a strip mining plan within six (6) months of its receipt from the operator. In the event a strip mining plan is disapproved, the department shall recommend the means to bring the plan into conformance with this act. Any strip mining plan not approved or disapproved by the department within six (6) months of its receipt will be deemed approved for the purposes of this act.

(2) The department shall adopt procedures for the submission of strip mining plans and prescribe the format for the preparation of strip mining plans.

(3) Upon request by the operator for good cause shown, the department may modify the terms and conditions of an approved strip mining plan at any time during the course of an operation.

History: En. Sec. 5, Ch. 220, L. 1973.

50-1406. Appeal on disapproval of plan—hearing—rules to prevent waste of coal. (1) If a strip mining plan is disapproved, the operator or his authorized representative may appeal to the board. Within thirty (30) days of receiving a request for a hearing, the board must hold a hearing. For good cause shown, the hearing may be held not more than sixty (60) days after receipt by the board of the request. The decision of the department with regard to the strip mining plan shall remain in effect not more than five (5) working days after the hearing unless the decision is sooner affirmed, modified or revoked by the board. The board may require an operator to submit any information it deems necessary for the hearing and may make inspections and investigations it deems necessary for the hearing.

(2) The board may adopt rules to prevent the waste of coal resulting from strip mining operations and to otherwise effectuate the purposes and intent of this act.

History: En. Sec. 6, Ch. 220, L. 1973.

50-1407. Civil penalty for operation without approved plan—noncompliance with plan—violation of rule as misdemeanor. (1) Any operator who engages in an operation without an approved strip mining plan as provided for in this act shall be liable to a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), and an additional civil penalty of not less than one hundred dollars (\$100) nor more than one thousand (\$1,000) for each day during which the violation continues. Such penalties shall be recoverable in an action brought in the name of the state by the attorney general in the district of the first judicial district of the state in and for the county of Lewis and Clark or in the district court having jurisdiction of the defendant.

(2) Any operator that fails to comply with the terms of an approved strip mining plan shall be liable to a civil penalty of not less than one

thousand dollars (\$1,000) nor more than ten thousand dollars (\$10,000). Upon conviction the court may revoke the strip mining plan. In the event of revocation of the strip mining plan, the operator must proceed as provided for in section 5 [50-1405]. The penalties provided for in subsection (1) of this section shall apply to revoked strip mining plans.

(3) Any person or operator who violates a rule adopted by the board pursuant to this act is guilty of a misdemeanor.

History: En. Sec. 7, Ch. 220, L. 1973.

50-1408. Procedure for hearings and appeals. All hearings and appeal procedures shall be in accordance with sections 82-4209 through 82-4217.

History: En. Sec. 8, Ch. 220, L. 1973.

Separability Clause

Section 9 of Ch. 220, Laws 1973 read "If a part of this act is invalid, all valid parts that are severable from the invalid

part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

50-1409. Deposition of fines. All fines collected under the provisions of this act shall be deposited in the general fund.

History: En. Sec. 10, Ch. 220, L. 1973.

Effective Date

Section 11 of Ch. 220, Laws 1973 read "This act is effective on its passage and approval except that for operations in

effect upon the date of the passage and approval of this act, the provisions of section 4 shall not apply to such operations for one (1) year from the effective date of this act."

CHAPTER 15—OPEN CUT MINING

- Section 50-1501. Short title.
 50-1502. Policy of state.
 50-1503. Contracts for reclamation.
 50-1504. Definitions.
 50-1505. Administration—delegation of functions.
 50-1506. Powers, duties, and functions of board.
 50-1507. Contract for reclamation required.
 50-1508. Application for contract—contents—issuance—amendment.
 50-1509. Bond.
 50-1510. Reclamation plan part of contract—requirements.
 50-1511. Receipt and expenditure of funds.
 50-1512. Inspection of opencut mining by board.
 50-1513. Operation without contract—penalty.
 50-1514. Reclamation of land on which bond forfeited.
 50-1515. Board hearing.
 50-1516. Exemption—operations covered by metal mine reclamation.
 50-1516.1. Chapter inapplicable to state and local government.
 50-1517. Exemption—operations on federal lands.

50-1501. Short title. This act shall be known and may be cited as "The Open Cut Mining Act."

History: En. Sec. 1, Ch. 326, L. 1973.

Title of Act

An act to provide for reclamation and conservation of land subject to open cut bentonite, sand or gravel mining; requiring reclamation contracts for opera-

tions resulting in removal of ten thousand (10,000) cubic yards of overburden or product; providing enforcement by the state board of land commissioners; repealing sections 50-1018 through 50-1033, R. C. M. 1947; and providing an effective date.

50-1502. Policy of state. It is the policy of this state to provide for the reclamation and conservation of land subjected to open cut bentonite, clay, scoria, phosphate rock, sand or gravel mining. Therefore, it is the purpose of this act to preserve natural resources, to aid in the protection of wildlife and aquatic resources, to safeguard and reclaim through effective means and methods all agricultural, recreational, home and industrial sites subjected to or which may be affected by open cut bentonite, clay, scoria, phosphate rock, sand or gravel mining to protect and perpetuate the taxable value of property, to protect scenic, scientific, historic or other unique areas, and to promote the health, safety and general welfare of the people of this state.

History: En. Sec. 2, Ch. 326, L. 1973; amd. Sec. 2, Ch. 209, L. 1974; amd. Sec. 2, Ch. 235, L. 1974.

pear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 209 and once by Ch. 235. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not ap-

Amendments

Chapter 209, Laws of 1974 inserted the references to "clay."

Chapter 235, Laws of 1974, inserted the references to "scoria" and "phosphate rock."

50-1503. Contracts for reclamation. The board is hereby authorized to enter into contracts with operators in the name of the state of Montana which will provide for the reclamation of lands on which opencut mining of bentonite, clay, scoria, phosphate rock, sand, and gravel has been or is to be conducted. The board is authorized to sue and be sued in the name of the state of Montana to enforce the provisions of any contract, and the board shall bring such court actions and take such other steps and actions as may be necessary to enforce the provisions of such contracts.

History: En. Sec. 3, Ch. 326, L. 1973; amd. Sec. 3, Ch. 209, L. 1974; amd. Sec. 3, Ch. 235, L. 1974; amd. Sec. 16, Ch. 39, L. 1977.

Chapter 235, Laws of 1974, inserted the references to "scoria" and "phosphate rock" in the first sentence.

The 1977 amendment substituted "board" for "state board of land commissioners" at the beginning of the first and second sentences; and made minor changes in phraseology and punctuation.

Amendments

Chapter 209, Laws of 1974 inserted the reference to "clay" in the first sentence.

50-1504. Definitions. When used in this act, unless a different meaning clearly appears from the context, the following definitions apply:

(1) "Contract" means a mined land reclamation contract prepared by the board to meet the requirements of this act.

(2) "Opencut mining" means the mining of bentonite, clay, scoria, phosphate rock, sand, or gravel by removing the overburden lying upon natural deposits thereof and mining directly from the natural deposits thereby exposed, including the removal of overburden for the purpose of determining the location, quality, or quantity of any natural deposit of bentonite, clay, scoria, phosphate rock, sand, or gravel.

(3) "Reclamation" means the reconditioning of the area of land affected by opencut-mining operations to make the area suitable for productive use, including but not limited to, forestry, agriculture, grazing, wildlife, recreation, or residential and industrial sites.

(4) "Overburden" means all of the earth and other materials which lie above a natural deposit of bentonite, clay, scoria, phosphate rock, sand, or gravel. "Spoil" is the overburden disturbed from its natural state in the process of opencut mining.

(5) "Operator" means a person engaged in and controlling an opencut-mining operation.

(6) "Affected land" means the area of land from which overburden is to be or has been removed and upon which the overburden is to be or has been deposited.

(7) "Board" means the state board of land commissioners.

(8) "Person" means a natural person or a firm, association, partnership, cooperative, or corporation or any department, agency, or instrumentality of the state or any governmental subdivision or any other entity whatever.

(9) "Landowner" means the owner of land directly or indirectly affected by an opencut-mining operation.

(10) "Public notice" means notice given by publication in a newspaper in the general area where the affected land is located. The notice shall be given once a week for 3 successive weeks.

(11) "Soils materials" are those horizons containing topsoil or other soils leached free of deleterious salts and capable of sustaining plant growth and recognized as such by standard authorities.

(12) "Refuse" means all waste material directly connected with the opencut-mining operations.

(13) "Final cut" means the last pit created in an opencut-mined area.

(14) "Highwall" means that side of the pit adjacent to unmined land.

(15) "Reclamation plan" means the description of current land use, topographical data, water data, soils data, leased areas, intended mine areas, and an explanation of proposed reclamation of the land with appropriate maps.

(16) "Progress report" means a report showing the land which the operator has affected by opencut mining during the year. The report shall show the number of acres of affected land and all reclamation accomplished.

History: En. Sec. 4, Ch. 326, L. 1974; amd. Sec. 4, Ch. 209, L. 1974; amd. Sec. 4, Ch. 235, L. 1974; amd. Sec. 17, Ch. 39, L. 1977.

Amendments

Chapter 209, Laws of 1974, inserted the references to "clay" in subdivisions (2) and (4).

Chapter 235, Laws of 1974, inserted the references to "scoria" and "phosphate rock" in subdivisions (2) and (4).

The 1977 amendment substituted "board" for "commission" in subdivisions (1) and (7); substituted "an explanation of" for "description of" in subsection (15); and made minor changes in phraseology, punctuation and style.

Effective Date

Section 5 of Ch. 209, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 14, 1974.

50-1505. Administration—delegation of functions. The board is the administrator of this act and it has all the power necessary to implement

and enforce it. The board may delegate to the commissioner of state lands such powers, duties, and functions under this act as it considers necessary for the performance of its duties.

History: En. Sec. 5, Ch. 326, L. 1973; **Amendments**
amd. Sec. 18, Ch. 39, L. 1977.

The 1977 amendment substituted "board" for "commission" in two places; and made minor changes in phraseology and punctuation.

50-1506. Powers, duties, and functions of board. The board has the following powers, duties, and functions to:

(1) enter into contracts where it is found on the basis of the information set forth in the application and an evaluation of the operation by the board that the requirements of the act or rules will be observed and that the operation and the reclamation of the affected area can be carried out consistently with the purpose of the act;

(2) prepare and adopt rules pertaining to opencut mining to accomplish the purposes of this act;

(3) conduct hearings and, for the purposes of conducting such hearings, administer oaths and affirmations, subpoena witnesses, compel attendance of witnesses, hear evidence, and require the production of any books, papers, correspondence, memoranda, agreements, documents, or other records relevant or material to the inquiry;

(4) adopt uniform procedures for the filing of necessary records, the issuance of contracts, and for any other matters of administration not specifically enumerated in this act;

(5) reclaim any affected land with respect to which a bond has been forfeited; and

(6) make investigations or inspections which are considered necessary to insure compliance with any provision of this act.

History: En. Sec. 6, Ch. 326, L. 1973; **Amendments**
amd. Sec. 19, Ch. 39, L. 1977.

The 1977 amendment substituted "board" for "commission" in two places; deleted "and regulations" after "rules" in subsection (2); and made minor changes in phraseology, punctuation and style.

50-1507. Contract for reclamation required. After March 16, 1973, no operator may conduct opencut-mining operations which will result in the removal of 10,000 cubic yards or more of product or overburden until he has entered into a contract with the board for the reclamation of the land affected. An operator conducting a number of operations, each of which result in the removal of less than 10,000 cubic yards of product or overburden but which result in the removal of 10,000 cubic yards or more of product or overburden in the aggregate is subject to the provisions of this act.

History: En. Sec. 7, Ch. 326, L. 1973; **Amendments**
amd. Sec. 20, Ch. 39, L. 1977.

The 1977 amendment substituted "board" for "commission" near the end of the first sentence; and made minor changes in phraseology, punctuation and style.

50-1508. Application for contract—contents—issuance—amendment.

(1) Applications for a contract shall be made upon a form furnished by the board, which form shall contain the following:

- (a) the name of the operator and, if other than the owner of the land, the name and address of the owner;
- (b) the type of operation to be conducted;
- (c) the volume of earth to be removed, as accurately as the volume may then be estimated, and the volume which has been previously removed, if any;
- (d) the location of the operation by legal subdivision, section, township and range, and county;
- (e) the date when the operation was or will be commenced; and
- (f) a statement that the applicant has the right and power by legal estate owned to mine by opencut mining the lands so described.

(2) The application shall be accompanied by:

- (a) a bond or security meeting the requirements as set out in this act;
- (b) a fee of \$50; and
- (c) the operator's plan of his operation and the method and manner of reclamation that will be used or followed.

(3) If, prior to applying for a contract, the operator notifies the board of his intention to submit a plan and requests the board to examine the area to be mined, the board shall cause the area to be examined and make recommendations to the operator regarding reclamation.

(4) Upon receipt of the application, bond or security, and fee due from the operator and upon agreement to the terms of the contract by the parties, the board may issue a contract to the applicant which entitles him to continue in or engage in opencut mining on the land therein described.

(5) An operator desiring to have his contract amended to cover additional contiguous or nearby land may file an amended application with the board. Upon receipt of the amended application and such additional bond as may be required and upon agreement to the terms of the amendment by the parties, the board may issue an amendment to the original contract covering the additional land described in the amended application without the payment of any additional fee.

(6) An operator may withdraw any land covered by contract, except affected land, by notifying the board thereof, in which case the penalty of the bond or security filed by the operator pursuant to the provisions of this act shall be reduced proportionately.

History: En. Sec. 8, Ch. 326, L. 1973; amd. Sec. 21, Ch. 39, L. 1977.

Amendments

The 1977 amendment inserted the subsection (1) designation at the beginning of the section; redesignated former subdivisions (1) through (5) as subdivisions (1)(a) through (1)(e); deleted former subdivision (6) which provided that the

operator had to submit a plan of operation and the method and manner of reclamation, and if prior to applying for a contract, he notified the commission of his intention to submit a plan, and requested the commission to examine the area to be mined, the commission would examine the area and make recommendations regarding reclamation; redesignated former subdivision (7) as subdivision

(1)(f); divided former subdivision (8) into subsections (2) and (4); inserted subdivision (2)(c) and subsection (3); redesignated former subdivisions (9) and (10) as subsections (5) and (6); substituted "board" for "commission" throughout the section; and made minor changes in phraseology, punctuation and style.

50-1509. Bond. (1) A bond required to be filed in this act by the operator shall be in such form as the board prescribes, payable to the state of Montana and conditioned upon the operator's full compliance with all requirements of this act and all rules of the board. The bond shall be signed by the landowner or operator, as appropriate, as principal, and by a good and sufficient corporate surety licensed to do business in the state of Montana, as surety. The penalty of the bond shall be in an amount not to exceed the costs of restoration required by this act as determined by the board but may not be less than \$200 or more than \$1,000 per acre.

(2) In lieu of the bond, the operator may deposit with the board cash and government securities or a bond with property sureties in an amount equal to that of the required bond on conditions as above prescribed. In the discretion of the board, surety bond requirements may be fulfilled by the operator's posting a bond with land and improvements and facilities thereon as security, in which event no surety may be required. The penalty of the bond or amount of cash and securities shall be increased or reduced from time to time as provided in this act. The bond or security remains in effect until the mined acreages have been reclaimed as provided under the contract and the reclamation has been approved and the bond or security has been released by the board. The bond or security shall cover only actual mined acreages and may be increased or reduced to cover only such acreages as remain unreclaimed.

(3) If the license of a surety upon a bond filed with the board pursuant to this act is suspended or revoked, the operator, within 30 days after receiving notice thereof from the board, shall substitute for that surety a good and sufficient surety licensed to do business in the state. Upon failure of the operator to make substitution of surety, the board may suspend the contract of the operator to conduct operations upon the land described in the contract until the substitution has been made.

(4) The board shall cause the reclamation of any affected land with respect to which a bond has been forfeited.

(5) Whenever an operator has completed all of the requirements under the provisions of this act as to any affected land, he shall notify the board thereof. If the board releases the operator from further obligation regarding such affected land, the penalty of the bond shall be reduced proportionately.

History: En. Sec. 9, Ch. 326, L. 1973; amd. Sec. 22, Ch. 39, L. 1977.

Amendments

The 1977 amendment substituted "board" for "commission" throughout the section; deleted "and regulations" after

"rules" near the end of the first sentence of subsection (1); deleted "to do business in the state" after "If the license" at the beginning of the first sentence of subsection (3); and made minor changes in phraseology, punctuation and style.

50-1510. Reclamation plan part of contract—requirements. The contract shall meet the following requirements:

(1) The operator shall submit a reclamation plan to the board before commencing any opencut mining and may not commence mining before the plan receives approval from the board. The operator may request and receive a meeting with the board prior to submission of the plan. If the board does not notify the operator that it has approved or disapproved a plan within 30 days after the board has received the plan, the board is considered to have approved the plan. The board, however, for sufficient cause, may extend its period of consideration for an additional 30 days if it notifies the operator prior to the end of the original 30-day period. The board shall submit each reclamation plan or amendments to the reclamation plan to the landowner for his recommendations and shall consider those recommendations in deciding whether to approve or disapprove any plan or amendments. The board may seek technical help from any state or federal agency. The board shall submit the plan immediately to the director of the university of Montana statewide archaeological survey for evaluation of possible archaeological or historical values in the area to be mined. The board may approve a reclamation plan only if the board has found that the plan provides for the best possible reclamation procedures available under the circumstances at the time, so that after mining operations are completed the affected land will be reclaimed to a productive use. Once the reclamation plan is accepted in writing by the board, it shall become a part of the contract but is subject to annual review and modification by the board.

(2) The board may not approve any reclamation plan unless the plan provides:

(a) that the land will be reclaimed for one or more specified uses, including but not limited to forest, pasture, orchard, cropland, residence, recreation, industry, habitat for wildlife, including food, cover, or water, or other uses;

(b) that to the extent reasonable and practicable, the operator will establish vegetative cover commensurate with the proposed land use;

(c) whenever operations result in a need to prevent acid drainage or sedimentation on or in adjoining lands or streams, for the construction of earth dams or other reasonable devices to control water drainage, provided the formation of such impoundments or devices will not interfere with other landowners' rights or contribute to water pollution;

(d) that to accomplish practical utilization of soil materials, such material will be utilized for placement on affected areas, if required by the reclamation plan after completion or termination of that particular phase of the mining operations, at a depth sufficient for plant growth on slopes of 3:1 or less;

(e) that grading will be commensurate with the topography sought and land use designated;

(f) that metal and other waste will be removed or buried;

(g) that all access, haul, and other support roads will be located, constructed, and maintained in such a manner as to control and minimize channeling and other erosion;

(h) that the operator will submit a progress report annually to the board;

(i) that all operations will be conducted so as to avoid range and forest fires and spontaneous combustion and that open burning of carbonaceous materials will be in accordance with suitable practices for fire prevention and control;

(j) that archaeological and historical values in areas to be mined will be given appropriate protection;

(k) that except for rock faces, bench faces, and excavations used for water impoundments, each surface area of the mined premises which will be disturbed will be revegetated when its use for extractive purposes is no longer required;

(l) that seeding and planting will be done in a manner to achieve a permanent suitable vegetative cover for wildlife, livestock, and retardation of erosion and that all seed will be drilled unless otherwise provided in the plan;

(m) that reclamation will be as concurrent with mining operations as feasible and will be completed within a specified length of time.

(3) If reclamation according to the plan has not been completed in the time specified, the board after 30 days' written notice shall order the operator to cease mining and, if the operator does not cease, shall institute an action to enjoin further operation and may sue for damages for breach of contract, for payment of the performance bond, or for both.

(4) (a) At any time during the period of reclamation the operator may for good reason submit to the board a new reclamation plan or amendment to the existing plan, including extensions of time.

(b) The board may approve the proposed new reclamation plan or amendments to the existing plan if:

(i) the operator has in good faith carried on reclamation according to the existing plan and the proposed new plan or amendments to the existing plan will result in reclamation as or more desirable than the reclamation proposed under the existing plan; or

(ii) it is highly improbable reclamation will be successful unless the existing plan is replaced or amended.

(c) When accepted, the proposed new reclamation plan or the proposed amendments to the existing plan become a part of the contract.

(5) The operator shall provide a performance bond or an alternative acceptable to the board in an amount commensurate with the estimated cost of reclamation, but in no case may the bond be less than \$200 per acre. The estimated cost of reclamation shall be set forth in the reclamation plan.

(6) The contract, reclamation plan, and amendments accepted by the board shall be a public record and open to inspection.

(7) The contract shall become effective when signed by the board and the operator and shall remain in force until terminated by mutual consent or by the board upon 6-months' notice.

History: En. Sec. 10, Ch. 326, L. 1973;
amd. Sec. 23, Ch. 39, L. 1977.

Amendments

The 1977 amendment substituted "board" for "commission" throughout the section; and made minor changes in phraseology, punctuation and style.

50-1511. Receipt and expenditure of funds. (1) The board may receive any federal funds, state funds, or any other funds for the reclamation of land affected by opencut mining. The board may cause the reclamation work to be done by its own employees or by employees of other governmental agencies, soil conservation districts, or through contracts with qualified persons.

(2) Any funds or any public works programs available to the board shall be used and expended to reclaim and rehabilitate any lands that have been subject to opencut mining that have not been reclaimed and rehabilitated in accordance with the standards of this act.

History: En. Sec. 11, Ch. 326, L. 1973; section designations; substituted "board" for "commission" throughout the section; amd. Sec. 24, Ch. 39, L. 1977. and made minor changes in punctuation and style.

Amendments

The 1977 amendment inserted the sub-

50-1512. Inspection of opencut mining by board. The board or its accredited representatives may enter upon lands subjected to opencut mining at all reasonable times for the purpose of inspection to determine whether the provisions of this act have been complied with.

History: En. Sec. 12, Ch. 326, L. 1973; amd. Sec. 25, Ch. 39, L. 1977.

Amendments

The 1977 amendment substituted "board" for "commission" at the beginning of the section; and made minor changes in punctuation and style.

50-1513. Operation without contract—penalty. Anyone required by this act to have a contract and who engages in opencut mining without previously securing a contract to do so as prescribed by this act is guilty of a misdemeanor and upon conviction thereof shall be fined not less than \$500 and not more than \$1,000. Each day of operation without a contract required by this act is a separate violation.

History: En. Sec. 13, Ch. 326, L. 1973; amd. Sec. 26, Ch. 39, L. 1977.

Amendments

The 1977 amendment made minor changes in phraseology, punctuation and style.

50-1514. Reclamation of land on which bond forfeited. In keeping with the provisions of this act, the board may reclaim any affected lands with respect to which a bond has been forfeited.

History: En. Sec. 14, Ch. 326, L. 1973; amd. Sec. 27, Ch. 39, L. 1977.

Amendments

The 1977 amendment substituted "board" for "commission" and made a minor change in phraseology.

50-1515. Board hearing. (1) A person who is aggrieved by a final decision of the commissioner of state lands is entitled to a hearing before the board.

(2) The Montana Administrative Procedure Act (Title 82, chapter 42, R.C.M. 1947) governs hearings before the board and judicial review of decisions of the board under this act.

History: En. Sec. 15, Ch. 326, L. 1973; amd. Sec. 28, Ch. 39, L. 1977.

Amendments

The 1977 amendment substituted "board" for "commission" throughout the section.

Separability Clause

Section 16 of Ch. 326, Laws 1973 read "The provisions of this act are severable, and if any part or provision thereof shall be held void the decision of the court so holding shall not affect or impair any

of the remaining parts of provisions of this act that are severable from the invalid applications."

Repealing Clause

Section 17 of Ch. 326, Laws 1973 read "Sections 50-1018 through 50-1033, R. C. M. 1947, are repealed. However, contracts entered into under the provisions of sections 50-1018 through 50-1033, R. C. M. 1947, are not affected hereby, and shall remain in effect until terminated or completed."

50-1516. Exemption—operations covered by metal mine reclamation. Nothing in this act may be construed to be applicable to mining or exploration operations which are regulated under the provisions of Title 50, chapter 12, R.C.M. 1947.

History: En. Sec. 18, Ch. 326, L. 1973; amd. Sec. 29, Ch. 39, L. 1977.

Amendments

The 1977 amendment substituted "may" for "shall" after "Nothing in this act."

Effective Date

Section 19 of Ch. 326, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 16, 1973.

50-1516.1. Chapter inapplicable to state and local government. The provisions of this chapter relating to fees or bonds do not apply to the state of Montana, counties, cities, or towns.

History: En. 50-1516.1 by Sec. 1, Ch. 81, L. 1975; amd. Sec. 30, Ch. 39, L. 1977.

Title of Act

An act to amend the Open Cut Mining Act to provide an exemption of the fees

and bonds for the state of Montana and its subdivisions.

Amendments

The 1977 amendment substituted "do not apply" for "shall not apply"; and made a minor change in punctuation.

50-1517. Exemption—operations on federal lands. This chapter is not applicable to operations on certain federal lands as specified by the board, provided it is first determined by the board that federal law or regulations issued by the federal agency administering the land impose controls for reclamation of those lands equal to or greater than those imposed by this chapter.

History: En. 50-1517 by Sec. 1, Ch. 219, L. 1975; amd. Sec. 31, Ch. 39, L. 1977.

Title of Act

An act to allow exemption from the Open Cut Mining Act on certain federal lands.

Amendments

The 1977 amendment substituted "is not" for "shall not be" after "This chapter"; and made minor changes in phraseology and punctuation.

CHAPTER 16—STRIP AND UNDERGROUND MINE SITING ACT

Section 50-1601. Short title.

50-1602. Policy of state—purposes of act—exercise of general police power.

50-1603. Definitions.

50-1604. Orders and rules of board—hearings.

50-1605. Administration—functions of department.

- 50-1606. Permit required to engage in preparatory work.
- 50-1607. Application for permit—contents—permit authorization—notification—fee—bond.
- 50-1608. Refusal of permit—grounds.
- 50-1609. Notice of noncompliance—suspension of permits—conditions required for reinstatement of permits.
- 50-1610. Receipts paid into special fund—use of fund.
- 50-1611. Violation—civil penalty—injunction—misdemeanor.
- 50-1612. Mandamus to compel enforcement of law.
- 50-1613. Procedure for hearings and appeals.
- 50-1614. Submitted information may be accepted to meet strip mining or underground mining permit requirements.
- 50-1615. Termination of permit.
- 50-1616. Effect of strip mine or underground mine siting permit on subsequent strip mining or underground mining permits.
- 50-1617. Application to preparatory work on contracts prior to January 1, 1974.

50-1601. **Short title.** This act shall be known and may be cited as “The Strip and Underground Mine Siting Act.”

History: En. 50-1601 by Sec. 1, Ch. 280, L. 1974; amd. Sec. 1, Ch. 441, L. 1975. tory work; providing for permits, reclamation plans, and penalties.

Title of Act

An act creating the Strip Mine Siting Act and providing for control of the location of new strip mines and prepara-

Amendments

The 1975 amendment substituted the present short title for “The Strip Mine Siting Act.”

50-1602. **Policy of state—purposes of act—exercise of general police power.** (1) It is the policy of this state to provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(2) It is the purpose of this act:

(a) to vest in the department the authority to review new strip mine and new underground mine site locations and reclamation plans and either approve or disapprove such locations and plans and to exercise general administration and enforcement of this act; and

(b) to vest in the board the authority to adopt rules, to suspend and revoke permits, and to conduct hearings; and

(c) to satisfy the requirement of article IX, section 2 of the constitution of this state, that all lands disturbed by the taking of natural resources be reclaimed; and

(d) to ensure that adequate information is available on areas proposed for strip mining or underground mining so that mining and reclamation plans may be properly formulated to accommodate areas that are suitable for strip mining or underground mining.

(3) This act is deemed to be an exercise of the general police power to provide for the health and welfare of the people.

History: En. 50-1602 by Sec. 2, Ch. 280, L. 1974; amd. Sec. 2, Ch. 441, L. 1975. underground mine” after “new strip mine” in subdivision (2)(a); and inserted “or underground mining” in two places in subdivision (2)(d).

Amendments

The 1975 amendment inserted “and new

50-1603. **Definitions.** When used in this act, unless a different meaning clearly appears from the context:

(1) "Operation" means all of the premises, facilities, railroad loops, roads, power lines, and equipment used in the process of producing and removing mineral from a designated strip mine or underground mine area.

(2) "Board" means the board of land commissioners as provided for in article X, section 4 of the constitution of this state.

(3) "Department" means the department of state lands provided for in Title 82A, chapter 11.

(4) "New mine" means a strip or underground mining operation proposed for an area of land which the department determines, because of distance from an existing strip mine or underground mine operation or their respective facilities or because of important differences in topography, soils, wildlife, geologic structure, aquifers or vegetation from an existing strip mine or underground mine operation, does not constitute an expansion of an existing operation.

(5) "Preparatory work" means all on-site disturbances, excluding prospecting, associated with the initiation of a new strip mine or underground mine, including but not limited to the construction of railroad spurs or loops, buildings to house mining operations, roads, storage and train load-out facilities, transmission lines, erection of draglines and loading shovels and other associated facilities.

(6) "Strip mining" means any part of the process followed in the production of mineral by the open cut method including mining by the auger method or any similar method which penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine which enters the deposit from a surface excavation, or any other method or process in which the strata or overburden is removed or displaced in order to recover the mineral.

(7) "Mineral" means mineral as defined in section 50-1036(1), R. C. M. 1947.

(8) "Person" means a person, partnership, corporation, association or other legal entity, or any political subdivision or agency of the state.

(9) "Operator" means a person who intends to operate a new strip mine or new underground mine involving the removal of more than ten thousand (10,000) cubic yards of mineral or overburden.

(10) "Underground mining" means any part of the process followed in the production of a mineral such that vertical or horizontal shafts, slopes, drifts or incline planes connected with excavations penetrating the mineral stratum or strata are utilized.

History: En. 50-1603 by Sec. 3, Ch. 280, L. 1974; amd. Sec. 3, Ch. 441, L. 1975.

Amendments

The 1975 amendment inserted references to underground mines after references to strip mines throughout the section; substituted "New mine" for "New

strip mine" in subdivision (4); inserted "or their respective facilities" after "mine operation" in subdivision (4); inserted "aquifers" before "or vegetation" in subdivision (4); added subdivision (10); and made minor changes in punctuation and phraseology.

50-1604. Orders and rules of board—hearings. The board:

(1) shall issue after an opportunity for a hearing, orders requiring an operator to adopt the remedial measures necessary to comply with this act and rules adopted under this act;

(2) shall issue after an opportunity for a hearing, a final order directing the department to revoke a permit, when the requirements set forth by the notice of noncompliance, order of suspension, or an order of the board requiring remedial measures have not been complied with according to the terms herein;

(3) shall adopt after an opportunity for a hearing, general rules pertaining to new strip mines and to new underground mines and preparatory work to accomplish the purposes of this act;

(4) shall conduct hearings under provisions of this act or rules adopted by the board.

History: En. 50-1604 by Sec. 4, Ch. 280, L. 1974; amd. Sec. 4, Ch. 441, L. 1975.

Amendments

The 1975 amendment inserted "and to new underground mines" in subdivision (3).

50-1605. Administration—functions of department. The department:

(1) shall exercise general supervision, administration, and enforcement of this act and all rules and orders adopted under this act;

(2) shall order the suspension of any permit for failure to comply with this act, any rule adopted under this act or permit issued pursuant to this act;

(3) shall order the halting of any operation that is started without first having secured a permit as required by this act;

(4) shall make investigations and inspections necessary to ensure compliance with this act;

(5) shall encourage and conduct investigations, research, experiments and demonstrations, and collect and disseminate information relating to new strip mines, new underground mines and reclamation of lands and waters affected by preparatory work;

(6) shall adopt rules with respect to the filing of reports, the issuance of permits and other matters of procedure and administration.

History: En. 50-1605 by Sec. 5, Ch. 280, L. 1974; amd. Sec. 5, Ch. 441, L. 1975.

Amendments

The 1975 amendment inserted "new underground mines" in subdivision (5).

50-1606. Permit required to engage in preparatory work. No person may commence preparatory work until the operator shall have first obtained from the department a mine site location permit for a new strip mine or a new underground mine, or a permit under chapter 10, Title 50, R. C. M. 1947, if the application for such permit under Title 50 includes an appropriate long-range mining plan acceptable to the department.

History: En. 50-1606 by Sec. 6, Ch. 280, L. 1974; amd. Sec. 6, Ch. 441, L. 1975.

Amendments

The 1975 amendment inserted "or a new underground mine" after "new strip mine."

50-1607. Application for permit—contents—permit authorization—notification—fee—bond. (1) A person desiring a mine site location permit shall file with the department an application which shall contain a reclama-

tion plan for any preparatory work and such other information the department deems necessary to determine if the proposed area to be affected by the operation is appropriate for the location of a new strip mine or a new underground mine. The department may require any information included in, but not limited to, an application for a strip mining permit or underground mining permit as required by chapter 10, Title 50, R. C. M. 1947.

(2) A mine site location permit shall authorize the applicant to engage in preparatory work upon the area described in the application and designated in the permit for a period of one (1) year from the date of issuance and is renewable until the applicant has applied for and received a strip mining or underground mining permit in accordance with chapter 10, Title 50, R. C. M. 1947.

(3) The department shall notify the applicant within three hundred sixty-five (365) days of receipt of a complete application if the proposed site is an acceptable location for development of a new strip mine or a new underground mine. If the site is approved, the department shall issue the applicant a mine site location permit. If the location is not approved, the department shall notify the applicant in writing, setting forth reasons why the location is not acceptable. The department shall also notify the applicant within three hundred sixty-five (365) days of receipt of a complete application whether the proposed reclamation plan is or is not acceptable. If the plan is not acceptable, the department shall set forth the reasons for nonacceptance of the plan. It may propose modifications, delete areas, or reject the entire plan.

(4) A fee of fifty dollars (\$50) shall be paid before the mine site location permit required in this act may be issued. The operator shall also file with the department a bond payable to the state of Montana with surety satisfactory to the department in the penal sum to be determined by the board (on the recommendation of the commissioner) of not less than two hundred dollars (\$200) nor more than ten thousand dollars (\$10,000) for each acre or fraction thereof of the area of land to be disturbed by preparatory work, with a minimum bond of five thousand dollars (\$5,000), conditioned upon the faithful performance of the requirements set forth in this act and of the rules of the board. In determining the amount of the bond within the above limits, the board shall take into consideration the character and nature of the surface and subsurface disturbances, the future suitable use of the land involved and the cost of removing or burying facilities, subsidence stabilization, water controls, backfilling, grading, topsoiling, and reclamation to be required. Notwithstanding the above limits the bond may not be less than the total estimated cost to the state of completing the work described in the reclamation plan.

History: En. 50-1607 by Sec. 7, Ch. 280, L. 1974; amd. Sec. 7, Ch. 441, L. 1975.

Amendments

The 1975 amendment added references to underground mines or mining to the references to strip mines and mining

throughout the section; inserted "and subsurface" after "surface" in the next to the last sentence of subsection (4); and inserted "subsidence stabilization, water controls" before "backfilling, grading" in the next to the last sentence of subsection (4).

50-1608. Refusal of permit—grounds. (1) The department may not issue a permit under this act if it finds that a new strip mine or a new underground mine is not consistent with the purposes and policies of this act.

(2) The department shall not approve a new strip mining site, a new underground mining site or preparatory work site for any areas of land or water included in the application if the department determines that the area could not be approved under the criteria specified in section 50-1042, R. C. M. 1947.

(3) The department shall not issue a permit under this act if a proposed reclamation plan does not meet the requirements of Title 50, chapter 10, R. C. M. 1947.

History: En. 50-1608 by Sec. 8, Ch. 280, L. 1974; amd. Sec. 8, Ch. 441, L. 1975.

Amendments

The 1975 amendment added reference

to underground mines or mining after references to strip mines or mining throughout the section; and made minor changes in punctuation.

50-1609. Notice of noncompliance—suspension of permits—conditions required for reinstatement of permits. (1) If any of the requirements of this act or rules or orders of the department and the board have not been complied with within the time limits set by the department or the board or by this act, the department shall serve a notice of noncompliance on the operator, or where found necessary, the commissioner shall order the suspension of a permit. The notice or order shall be handed to the operator in person or served by registered mail addressed to the permanent address shown on the application for a permit. The notice of noncompliance or order of suspension shall specify in what respects the operator has failed to comply with this act or the rules or orders of the department and the board. If the operator has not complied with the requirement set forth in the notice of noncompliance or order of suspension within time limits set therein, the permit may be revoked by order of the board and the performance bond forfeited to the department.

(2) Any additional strip mining, or underground mining, or mine site location permits held by an operator whose mine site location permit has been revoked shall be suspended and the operator is not eligible to receive another permit or to have the suspended permits reinstated until he has complied with all the requirements of this act in respect to former permits issued him. An operator who has forfeited a bond is not eligible to receive another permit unless the land for which the bond was forfeited has been reclaimed without cost to the state, or the operator has paid into the reclamation account a sum together with the value of the bond, the board finds adequate to reclaim the lands. The department may not issue any additional permits to an operator who has repeatedly been in noncompliance or violation of this act.

History: En. 50-1609 by Sec. 9, Ch. 280, L. 1974; amd. Sec. 9, Ch. 441, L. 1975.

Amendments

The 1975 amendment inserted "or underground mining" after "strip mining" near the beginning of subsection (2).

50-1610. Receipts paid into special fund—use of fund. (1) All fees, forfeit funds, and other moneys available or paid to the department under the provisions of this act shall be placed in the state treasury and credited to a special agency account to be designated as the mining and reclamation fund. This fund shall be available to the department by appropriation and shall be expended for the administration and enforcement of this act and for the reclamation and revegetation of land and the rehabilitation of water affected by any mining operations. Any unencumbered and any unexpended balance of this fund remaining at the end of any fiscal year shall not lapse but shall be carried forward for the purposes of this act until expended or until appropriated by subsequent legislative action.

History: En. 50-1610 by Sec. 10, Ch. 280, L. 1974; amd. Sec. 10, Ch. 441, L. 1975. section (1) designation. There are no other subsections.

Compiler's Notes

This section was enacted with the sub-

Amendments

The 1975 amendment deleted "strip" before "mining and reclamation fund" at the end of the first sentence.

50-1611. Violation—civil penalty—injunction—misdemeanor. (1) A person or operator who violates any of the provisions of this act or rules or orders adopted under this act shall pay a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for the violation, and an additional civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each day during which a violation continues, and may be enjoined from continuing such violations as hereinafter provided in this section. These penalties shall be recoverable in any action brought in the name of the state of Montana by the attorney general in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or in the district court having jurisdiction of the defendant.

(2) The attorney general shall, upon the request of the commissioner, sue for the recovery of the penalties provided in this section for, and bring an action for a restraining order, temporary or permanent injunction, against an operator or other person violating or threatening to violate an order adopted under this act.

(3) A person who willfully violates any of the provisions of this act, or any determination or order adopted under this act which has become final is guilty of a misdemeanor and shall be fined not less than five hundred dollars (\$500) and not more than five thousand dollars (\$5,000). Each day on which a violation occurs constitutes a separate offense.

History: En. 50-1611 by Sec. 11, Ch. 280, L. 1974.

50-1612. Mandamus to compel enforcement of law. (1) A resident of this state, with knowledge that a requirement of this act or a rule adopted under this act, is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule may bring the failure to enforce to the attention of the public officer or employee by a

written statement under oath that shall state the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed under the law of perjury.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce the requirement or rule, the resident may bring an action of mandamus in the district court of the first judicial district of this state, in and for the county of Lewis and Clark or in the district court of the county in which the land is located. The court, if it finds that a requirement of this act or a rule adopted under this act, is not being enforced shall order the public officer or employee, whose duty is to enforce the requirement or rule, to perform his duties. If he fails to do so, the public officer or employee shall be held in contempt of court and is subject to the penalties provided by law.

History: En. 50-1612 by Sec. 12, Ch. 280, L. 1974.

50-1613. Procedure for hearings and appeals. All hearing and appeal procedures shall be in accordance with the Montana Administrative Procedure Act.

History: En. 50-1613 by Sec. 13, Ch. 280, L. 1974.

50-1614. Submitted information may be accepted to meet strip mining or underground mining permit requirements. The department may choose to accept information submitted under this act to the extent it is applicable and relevant as satisfying the requirements of chapter 10, Title 50.

History: En. 50-1614 by Sec. 14, Ch. 280, L. 1974; amd. Sec. 11, Ch. 441, L. 1975. **Amendments**
The 1975 amendment inserted "or underground mining" in the caption.

50-1615. Termination of permit. A mine site location permit granted by the department in accordance with the provisions of this act shall remain in full force and effect until the provisions of the permit are complied with and the bond is released, except that those areas of land covered by a mine site location permit for which a strip mining or an underground mining permit is granted pursuant to the provisions of chapter 10, Title 50, shall be released from the terms and provisions of the mine site location permit.

History: En. 50-1615 by Sec. 15, Ch. 280, L. 1974; amd. Sec. 12, Ch. 441, L. 1975. **Amendments**
The 1975 amendment inserted "or an underground mining" after "strip mining."

50-1616. Effect of strip mine or underground mine siting permit on subsequent strip mining or underground mining permits. When the department has sufficient information to approve or disapprove a mine site location permit application on either the entire area being considered for a mine site location permit or a portion thereof on the grounds listed in section 50-1042 (2) and (4), it shall so state in a written statement to the operator. This decision is binding on the department with regard to strip

mining or underground mining permit applications as specified in chapter 10, Title 50, R. C. M. 1947, unless:

(1) new information is submitted or obtained in compliance with chapter 10, Title 50, which indicates a situation not existing or known at the time of the issuance of a permit under this act;

(2) an application under this act misrepresented information related to the criteria;

(3) a situation develops because of strip mining or underground mining operations which was not in existence at the time of the issuance of a permit under this act.

History: En. 50-1616 by Sec. 16, Ch. 280, L. 1974; amd. Sec. 13, Ch. 441, L. 1975.

Amendments

The 1975 amendment inserted references to underground mining throughout the section.

50-1617. Application to preparatory work on contracts prior to January 1, 1974. The provisions of this act shall not apply where any preparatory work was conducted prior to January 1, 1974, or for which contracts for preparatory work or the sale of Montana coal from a new strip mine by an operator holding a valid permit under section 50-1039 were in existence and proven specific notice thereof given to the department prior to January 1, 1974.

History: En. 50-1617 by Sec. 17, Ch. 280, L. 1974.

CHAPTER 17—CONTROL OF URANIUM SOLUTION EXTRACTION

Section 50-1701. Statement of legislative findings and policy.

50-1702. Definitions.

50-1704. Suspension of action.

50-1701. Statement of legislative findings and policy. The legislature, noting that the energy shortage has prompted a widespread search for energy resources; that there is substantially increased prospecting, exploration and land acquisition for uranium in Montana; that rising world prices make previously uneconomical uranium deposits economically recoverable; that many Montana uranium deposits are so deep or have such a configuration that economic recovery is only possible through extraction in-place; and that extraction and energy companies have shown interest in utilizing in-place leaching in Montana to recover uranium; and further noting that pilot projects involving solution extraction are being seriously undertaken in other states and that contamination of fresh water resources is occurring, finds that solution extraction of uranium constitutes a technologically feasible method of uranium extraction which threatens Montana's land and water resources to the detriment of existing and projected agricultural, recreational, domestic, and other uses. The legislature, pursuant to its mandate and authority under article IX of the Montana constitution declares that it is the policy of the state to provide for the protection of the lands and waters of the

state and therefore to make provisions for the control of uranium solution extraction and rehabilitation of lands and waters affected by this extraction.

History: En. 50-1701 by Sec. 1, Ch. 317, L. 1975.

Title of Act

An act directing the department of natural resources to make recommenda-

tions and propose legislation to provide for the control of uranium solution extraction and the protection and rehabilitation of lands and waters affected by uranium solution extraction; and to provide an immediate effective date.

50-1702. Definitions. Unless the context clearly requires otherwise, in this act:

(1) "department" means the department of natural resources and conservation;

(2) "solution extraction" means any part of the process followed in the extraction of uranium by injection of a solvent into zones below the earth's surface and subsequent withdrawal of the solution and processing of uranium;

(3) "person" means a person, partnership, corporation, association, or other legal entity, or any political subdivision or agency of the state;

(4) "operation" means all of the premises, facilities, railroad loops or spurs, roads, injection or extraction wells, associated facilities, equipment, or any other surface or subsurface disturbance associated with or used in the process of solution extraction and processing uranium from a designated area.

History: En. 50-1702 by Sec. 2, Ch. 317, L. 1975.

50-1703. Repealed.

Repeal

Section 50-1703 (Sec. 3, Ch. 317, L.

1975), relating to department review, was repealed by Sec. 2, Ch. 543, Laws 1977.

50-1704. Suspension of action. No person may initiate construction of or in any way undertake an operation for the purpose of solution extraction of uranium from in place deposits until April 1, 1978, unless the board of health and environmental sciences adopts rules regulating the solution extraction of uranium from in place deposits prior to that date. In the event such rules are adopted, no person may initiate construction of, or in any way undertake an operation for the purpose of solution extraction of uranium from in place deposits until the rules take effect.

History: En. 50-1704 by Sec. 4, Ch. 317, L. 1975; amd. Sec. 1, Ch. 543, L. 1977.

Amendments

The 1977 amendment deleted "propose" after "No person may" at the beginning of the section; substituted "from in place deposits until April 1, 1978 * * * prior to that date" at the end of the first sentence for "for a period of two (2) years from the effective date of this act"; and added the second sentence.

"If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Effective Date

Section 6 of Ch. 317, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved April 8, 1975.

Separability Clause

Section 5 of Ch. 317, Laws 1975 read

Repealing Clause

Section 2 of Ch. 543, Laws 1977 read

"Section 50-1703, R. C. M. 1947, is repealed."

CHAPTER 18—IMPACT FROM COAL DEVELOPMENT

- Section 50-1801. Purpose.
- 50-1802. Local impact and education trust fund account and coal area highway improvement account established.
- 50-1803. Coal area highway reconstruction program.
- 50-1804. Coal board established—composition.
- 50-1805. Chairman—meetings—compensation.
- 50-1806. Coal board—general powers.
- 50-1807. Priorities for impact grants.
- 50-1808. Office facilities and staff.
- 50-1809. Applications for grants.
- 50-1810. Disposition of interest from unexpended balance.

50-1801. Purpose. The purposes of this act are to assist local governmental units which have been required to expand the provision of public services as a consequence of large-scale development of coal mines and coal-using energy complexes, to assist in the construction and reconstruction of designated portions of highways which serve the area affected by such large-scale development, to support county land planning, and to invest a portion of the tax revenue from coal mines in a permanent fund, the income from which shall be used for the support of public schools throughout the state.

History: En. 50-1701 by Sec. 1, Ch. 502, L. 1975.

Title of Act

An act creating funds for assisting local governments and highway systems impacted by coal development and for the support of public schools throughout the state; creating a fund to support county planning; allocating certain revenue from

coal taxes to the funds; establishing a board to make grants to local governments; authorizing the department of community affairs to support county planning; directing the department of highways to reconstruct certain roads; establishing a legislative review committee; making appropriations; amending sections 75-6916 and 84-1309.1, R. C. M. 1947.

50-1802. Local impact and education trust fund account and coal area highway improvement account established. (1) There is within the earmarked revenue fund a local impact and education trust fund account. Moneys are payable into this account under section 84-1319. The state treasurer shall draw warrants from this account upon order of the coal board.

(2) There is within the earmarked revenue fund a coal area highway improvement account.

History: En. 50-1702 by Sec. 2, Ch. 502, L. 1975.

50-1803. Coal area highway reconstruction program. (1) There is appropriated to the department of highways for each of the 4 fiscal years following July 1, 1975, all the funds in the coal area highway improvement account for carrying out the programs authorized by this section. Any funds thus appropriated and not expended before June 30, 1979, may, not-

withstanding the provisions of 79-1015.3, be expended or encumbered to carry out this section until June 30, 1981.

(2) The department of highways, within the area designated as the eastern Montana coal field economic growth center as certified to the secretary of transportation by the governor under section 143, Title 23, United States Code, shall prepare a special construction program for the reconstruction of deficient sections of these highways.

(3) The department of highways shall expedite the planning and reconstruction program for projects on the designated portions within this area by using funds allocated under this subsection and any federal funds that may be made available to match such funds; until federal funds are made available to match the funds allocated under this subsection the department of highways may, upon approval of the Montana state highway commission, expend such funds for planning and reconstruction projects with or without assurance from the federal government that unmatched state expenditures will be retroactively recognized for matching purposes.

(4) Funds allocated under this subsection shall not be used to match apportionments made for primary and secondary highways under the Federal-Aid Highway Acts; however, nothing in this subsection should be construed to prohibit the implementation of projects otherwise funded by apportionments made under the Federal-Aid Highway Acts; furthermore, planning and reconstruction projects may be financed in whole or in part by public and private funds provided such projects conform to the applicable standards, regulations, and procedures of the department of highways and the federal highway administration.

History: En. 50-1703 by Sec. 4, Ch. 502, L. 1975; amd. Sec. 2, Ch. 540, L. 1977.

Amendments

The 1977 amendment substituted "July 1, 1975" in the first sentence of subsection (1) for "the effective date of this act";

added the second sentence of subsection (1); added "with or without assurance from the federal government that unmatched state expenditures will be retroactively recognized for matching purposes" to subsection (3); and made minor changes in punctuation and style.

50-1804. Coal board established—composition. (1) There is a coal board composed of seven members.

(2) The coal board is allocated to the department of community affairs for administrative purposes only as prescribed in section 82A-108.

(3) The members of the coal board are selected as follows: The governor shall appoint a seven-member coal board, as provided under 82A-112, two from the impact areas and two with expertise in education. The governor shall further, in making these appointments, consider people from these fields: business, engineering, public administration and planning. No more than four members may be residents of the same congressional district.

History: En. 50-1704 by Sec. 5, Ch. 502, L. 1975; amd. Sec. 6, Ch. 540, L. 1977.

Amendments

The 1977 amendment inserted "as provided under 82A-112" in the first sentence of subsection (3); and made minor changes in style.

50-1805. Chairman—meetings—compensation. (1) The board shall elect a chairman from among its members.

(2) The board shall meet quarterly and may meet at other times as called by the chairman or a majority of the members.

(3) Members are entitled to compensation as provided for in section 82A-112 (7).

History: En. 50-1705 by Sec. 6, Ch. 502, L. 1975.

50-1806. Coal board—general powers. The board may:

(1) retain professional consultants and advisors;

(2) adopt rules governing its proceedings;

(3) consider applications for grants from the local impact and education trust fund account; and

(4) award grants, subject to 50-1807, not to exceed in any one year seven-elevenths, and after June 30, 1979, seven-fifteenths of the revenue paid into the local impact and education trust fund account, to local governmental units and state agencies to assist local governmental units in meeting the local impact of coal development by enabling them to adequately provide governmental services and facilities which are needed as a direct consequence of coal development. As used in the preceding sentence, "revenue paid" does not include interest income from the account reinvested in the account in trust for the public schools and the university system. Such grants shall be awarded on the basis of (a) need, (b) degree of severity of impact from the coal development, (c) availability of funds, and (d) degree of local effort in meeting these needs. The board shall formulate guidelines to evaluate degree of local effort, considering bond issues and millage levels. To the extent funds are needed to evaluate and plan for the impact needs caused by coal development, consideration of bond issues and millage levies may be waived.

History: En. 50-1706 by Sec. 7, Ch. 502, L. 1975; amd. Sec. 3, Ch. 540, L. 1977.

appropriation any funds necessary for the functions of the legislative review committee.

Compiler's Notes

Section 13 of Ch. 502, Laws 1975, appropriated to the coal board for its expenses and for making grants under this section seven-elevenths (7/11) of the funds in the local impact and education trust fund accounts for the biennium ending June 30, 1977. The coal board was also given authority to transfer out of this

Amendments

The 1977 amendment increased the maximum amount of grants after June 30, 1979, from three-sevenths to seven-fifteenths of the revenue paid into the account in subdivision (4); and made minor changes in style.

50-1807. Priorities for impact grants. (1) The department of community affairs shall designate counties, towns, school districts and other governmental units which have had or expect to have an increase in estimated population of at least ten per cent (10%) during any three (3) years since 1972 as a result of the impact of coal development. The coal board shall, subject to the appropriations of the legislature, award at least fifty per cent (50%) of all grants awarded to governmental units and state

agencies for meeting the needs caused by coal development each year to these designated governmental units.

(2) Attention should be given by the coal board to the need for community planning before the full impact is realized. Applicants should be able to show how their request reasonably fits into an over-all plan for the orderly management of the existing or contemplated growth problems.

(3) All funds placed in the local impact and educational trust fund account established under this act, subject to the limitations imposed by section 50-1810, shall be subject to appropriations by the legislature for use related to local impact or for transfer to a permanent trust for education.

History: En. 50-1707 by Sec. 8, Ch. 502, L. 1975.

50-1808. Office facilities and staff. The department of community affairs will provide suitable office facilities and the necessary staff for the coal board.

History: En. 50-1708 by Sec. 9, Ch. 502, L. 1975.

50-1809. Applications for grants. The governing body of a city, town, county, or school district or any other local or state governmental unit or agency may apply for a grant to enable it to provide governmental services which are needed as a direct consequence of coal development. The coal board shall prescribe the form for applications. Applicants shall describe the nature of their proposed expenditures and the time involved. The board may commit itself to the expenditure of funds for more than one (1) year for a single project, as long as the grant does not extend over more than ten (10) years and does not exceed reasonable revenue expectations. No state agency may receive grants which exceed five per cent (5%) of the money allocated to the board.

History: En. 50-1709 by Sec. 10, Ch. 502, L. 1975.

50-1810. Disposition of interest from unexpended balance. The unexpended balance in the local impact and education trust fund account shall be invested as provided by statute by the state board of investments. Ten per cent (10%) of the income from such investments each year shall be added to the principal of the account to be segregated and held in trust for the purposes of supporting the public schools and university systems of the state. Of the remaining ninety per cent (90%) of the income from such investments, three-fourths ($\frac{3}{4}$) shall be annually paid into the earmarked revenue fund, for state equalization aid to public schools of the state and one-fourth ($\frac{1}{4}$) each year shall be paid to the board of regents of higher education for use by the institutions of higher learning in the state of Montana subject to the budgeting authority of the legislature. Except as provided in section 6 (5) [50-1806(4)] herein the principal of the local impact and educational trust fund shall be dedicated to education and forever remain inviolate and sacred to this purpose as provided in sections 3 and 10 of this article X of the Montana constitution.

History: En. 50-1710 by Sec. 11, Ch. 502, L. 1975.

Temporary Provisions

Section 15 of Ch. 502, Laws 1975 read “(1) There is a select interim committee of the legislature, composed and appointed as provided under section 43-716, R. C. M. 1947, from the standing committees on taxation.

“(2) The select committee shall review the programs authorized under Senate Bill 86, Senate Bill 87, and House Bill 642, as such programs are established and implemented. The select committee may also review the impact of the severance and gross proceeds taxes upon the coal industry.

“(3) The departments of revenue, highways, natural resources and conservation, and community affairs, and the coal board shall furnish the select committee such information as the committee may require. The select committee may require that some or all of the grant or loan applications received under Senate

Bill 86, Senate Bill 87, or House Bill 642, together with the proposed action thereon, be referred to the committee before the agency takes final action on such applications.

“(4) The legislative auditor, the legislative council, or both, shall furnish professional and clerical staff assistance to the select committee.

“(5) The select committee may make such recommendations as it deems proper, at any time to the departments of revenue, highways, natural resources and conservation, and community affairs, and the coal board, and to the forty-fifth legislature prior to the convening thereof.”

Section 5 of Ch. 540, Laws 1977 read “There is a new section that reads as follows: Coal tax oversight committee continued. The select committee established by section 15, Chapter 502, Laws of 1975, is continued for the biennium ending June 30, 1979, and is directed to report its recommendation to the 46th legislature.”

TITLE 51—MONOPOLIES

- Chapter 3. Montana Cigarette Sales Act, 51-301 to 51-314.
5. Unfair trade practices, 51-501 to 51-524.
6. Licensing of new motor vehicle manufacturers, distributors, and importers, 51-601 to 51-615.

CHAPTER 1—UNFAIR PRACTICES ACT

51-101, 51-101.1. Repealed.

Repeal

Sections 51-101 and 51-101.1 (Sec. 1, Ch. 80, L. 1937; Sec. 119, Ch. 431, L. 1975), relating to unfair competition in

the sale of commodities and the definition of "department," were repealed by Sec. 29, Ch. 518, Laws 1977.

51-102. [Transferred.]

Compiler's Notes

Section 3, Ch. 518, Laws 1977, renumbered this section as Sec. 51-503.

51-103. Repealed.

Repeal

Section 51-103 (Sec. 3, Ch. 80, L. 1937; Sec. 1, Ch. 129, L. 1949), relating to sales

at less than cost, was repealed by Sec. 29, Ch. 518, Laws 1977.

51-104. [Transferred.]

Compiler's Notes

Section 12, Ch. 518, Laws 1977, renumbered this section as Sec. 51-512.

51-105. Repealed.

Repeal

Section 51-105 (Sec. 5, Ch. 80, L. 1937), relating to proof of intent by cost sur-

vey, was repealed by Sec. 29, Ch. 518, Laws 1977.

51-106. [Transferred.]

Compiler's Notes

Section 14, Ch. 518, Laws 1977, renumbered this section as 51-514.

51-107. [Transferred.]

Compiler's Notes

Section 13, Ch. 518, Laws 1977, renumbered this section as Sec. 51-513.

51-108. [Transferred.]

Compiler's Notes

Section 15, Ch. 518, Laws 1977, renumbered this section as Sec. 51-515.

51-109. [Transferred.]**Compiler's Notes**

Section 23, Ch. 518, Laws 1977, re-numbered this section as Sec. 51-523.

51-110. [Transferred.]**Compiler's Notes**

Section 22, Ch. 518, Laws 1977, re-numbered this section as Sec. 51-522.

51-111. [Transferred.]**Compiler's Notes**

Section 21, Ch. 518, Laws 1977, re-numbered this section as Sec. 51-521.

51-112. Repealed.**Repeal**

Section 51-112 (Sec. 11, Ch. 80, L. 1937), relating to penalties for violations

of the act, was repealed by Sec. 29, Ch. 518, Laws 1977.

51-113. [Transferred.]**Compiler's Notes**

Section 19, Ch. 518, Laws 1977, re-numbered this section as Sec. 51-519.

51-114. [Transferred.]**Compiler's Notes**

Section 11, Ch. 518, Laws 1977, re-numbered this section as Sec. 51-511.

51-115. [Transferred.]**Compiler's Notes**

Section 20, Ch. 518, Laws 1977, re-numbered this section as Sec. 51-520.

51-116. [Transferred.]**Compiler's Notes**

Section 18, Ch. 518, Laws 1977, re-numbered this section as Sec. 51-518.

51-117. [Transferred.]**Compiler's Notes**

Section 1, Ch. 518, Laws 1977, re-numbered this section as Sec. 51-501.

51-118. Repealed.**Repeal**

Section 51-118 (Sec. 15, Ch. 80, L.

1937), relating to the title of the act, was repealed by Sec. 29, Ch. 518, Laws 1977.

CHAPTER 3—MONTANA CIGARETTE SALES ACT

- Section 51-301. Declaration of policy.
51-302. Short title.
51-303. Definitions.
51-304. Practices declared unlawful—penalty—prima facie evidence of unlawful intent.
51-305. Sales from wholesaler to wholesaler.
51-306. Combination sales.
51-307. Exceptions.
51-308. Sales to meet competition.
51-309. Contracts in violation void.
51-310. Evidence to be considered as bearing on bona fides of cost.
51-311. Cigarettes purchased outside ordinary trade channels.
51-312. Cost survey.
51-313. Civil suits for violation of act.
51-314. Powers of board.

51-301. Declaration of policy. It is hereby declared that the advertising, offering for sale or sale of cigarettes below cost, in the retail and wholesale trades, with the intent of injuring competitors or lessening competition, is an unfair and deceptive business practice. It is hereby declared to be the policy of the state to promote the public welfare and it is the purpose of this act to carry out that policy in the public interest and stabilize the sale of cigarettes, maximize and protect the state revenues from this source.

History: En. Preamble, Ch. 258, L. 1965.

Title of Act

An act to prevent unfair competition and unfair trade practices in the sale of cigarettes; to prohibit sales of cigarettes below cost; to protect and stabilize the collection of taxes on the sale of cigarettes

and revenues from the licensing of persons engaged in the sale of cigarettes; to confer powers and impose duties on the state board of equalization and on persons, as herein defined, engaged in the sale of cigarettes at retail or wholesale; and providing remedies and imposing penalties for violations thereof.

51-302. Short title. This act shall be known, designated and cited as "The Montana Cigarette Sales Act."

History: En. Sec. 1, Ch. 258, L. 1965.

51-303. Definitions. When used in this act, the following words and phrases shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning: (1) "Person" shall mean and include any individual, firm, association, company, partnership, corporation for profit or nonprofit corporation, joint stock company, club, agency, syndicate, co-operative, municipal corporation or other political subdivision of this state, trust, receiver, trustee, fiduciary and conservator.

(2) "Wholesaler" shall include any person who:

- (a) purchases cigarettes directly from the manufacturer; or
- (b) purchases cigarettes from any other person who purchases from the manufacturer and who acquires such cigarettes solely for the purpose of bona fide resale to retail dealers; or
- (c) services retail outlets by the maintenance of an established place of business for the purchase of cigarettes, including, but not limited to,

the maintenance of warehousing facilities for the storage and distribution of cigarettes.

Nothing contained herein shall prevent a person from qualifying in different capacities as both "wholesaler" and "retailer" under the applicable provisions of this act.

(3) "Retailer" shall mean and include any person who operates a store, stand, booth or concession for the purpose of making sales of cigarettes at retail.

(4) "Administrative agency" or "department" shall mean the state department of revenue of Montana and, where the meaning or the context so requires, all deputies and employees duly authorized by such board.

(5) "Cigarettes" shall mean any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.

(6) "Sale" shall mean any transfer for a consideration, exchange, barter, gift, offer for sale and distribution, in any manner, or by any means whatever.

(7) "Sell at wholesale," "sale at wholesale" and "wholesale" sales shall mean and include any bona fide transfer of title to cigarettes for a valuable consideration, made in the ordinary course of trade or in the usual conduct of the wholesaler's business, to a retailer for the purpose of resale.

(8) "Sell at retail," "sale at retail" and "retail sales" shall mean and include any transfer of title to cigarettes for a valuable consideration, made in the ordinary course of trade or usual conduct of the seller's business, to the purchaser for consumption or use.

(9) "Basic cost of cigarettes" shall mean the invoice cost of cigarettes to the retailer or wholesaler, as the case may be, or the replacement cost of cigarettes to the retailer or wholesaler, as the case may be, in the quantity last purchased, whichever is lower.

(10) (a) The term "cost to the wholesaler" shall mean the "basic cost of cigarettes" to the wholesaler plus the "cost of doing business by the wholesaler," as evidenced by the standards and methods of accounting regularly employed by the said wholesaler in his determination of costs for income tax reporting purposes for the total operation of his establishment and shall include within said costs, without limitation, labor costs (including salaries of executives and officers), rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, business taxes, insurance and advertising. The cost of doing business by a wholesaler shall also include any rebates, patronage dividends or concessions no matter how defined, and any and all other indirect or overhead costs with respect to the operation of the establishment of the said wholesaler, expressed as a percentage and applied to the "basic cost of cigarettes."

(b) In the absence of the filing with the department of proof which the department declares to be satisfactory of a lesser or higher cost of doing business by the wholesaler making the sale, the "cost of doing business by the wholesaler" shall be presumed to be five per centum (5%) of the "basic cost of cigarettes" to the wholesaler, plus cartage to the retail outlet, if performed or paid for by the wholesaler, which cartage cost, in the absence of the filing with the department of satisfactory proof of a lesser or higher cost, shall be considered to be three-fourths of one per centum ($\frac{3}{4}$ of 1%) of the "basic cost of cigarettes" to the wholesaler.

(11) (a) The term "cost to the retailer" shall mean the "basic cost of cigarettes" to the retailer plus the "cost of doing business by the retailer" as evidenced by the standards and methods of accounting regularly employed by the said retailer in his determination of costs for income tax reporting purposes for the total operation of his establishment and shall include within said costs, without limitation, labor costs, (including salaries of executives and officers), rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, business taxes, insurance, and advertising, including any rebates or concessions no matter how defined, and any and all other indirect or overhead costs with respect to the operation of the establishment of the said retailer, expressed as a percentage and applied to the "basic costs of cigarettes"; provided, however, that any retailer who purchases from the manufacturer or from any other person at or at less than or about the price normally and usually charged for purchases in wholesale quantities shall, in determining "cost to the retailer," pursuant to this subsection, add the "cost of doing business by the wholesaler," as determined in subparagraph 10 (b) of this act, to the "basic cost of cigarettes" to said retailer, as well as the "cost of doing business by the retailer."

(b) In the absence of the filing with the department of satisfactory proof of a lesser or higher cost of doing business by the retailer making the sale, the "cost of doing business by the retailer" shall be presumed to be ten per centum (10%) of the "basic cost of cigarettes" to the retailer.

(c) In the absence of the filing with the department of satisfactory proof of a lesser or higher cost of doing business, the "cost of doing business by the retailer," who, in connection with the retailer's purchase, received not only the discounts ordinarily allowed upon purchases by a retailer, but also, in whole or part, the discounts ordinarily allowed upon purchases by a wholesaler, shall be presumed to be ten per centum (10%) of the sum of the "basic cost of cigarettes" and the "cost of doing business by the wholesaler."

(12) "Business day" shall mean any day other than a Sunday or a legal holiday.

History: En. Sec. 2, Ch. 258, L. 1965; amd. Sec. 1, Ch. 130, L. 1967; amd. Sec. 16, Ch. 391, L. 1973.

Amendments

The 1967 amendment in subparagraph (10)(a) substituted "by the standards and methods * * * shall include within said costs" for "accounting, which shall in-

clude allocation of overhead costs and expenses, paid or incurred, and must include" after "as evidenced by" and added the last sentence; in subparagraph (11) (a) substituted "the said retailer * * * shall include within said costs" for "him in his allocation of overhead costs and expenses, paid or incurred, and must include" after "employed by," inserted "costs" after "labor," inserted "business" before "taxes," inserted "including any rebates * * * the 'basic costs of cigarettes'" after "advertising," inserted "however" after "provided," substituted "purchases from the manufacturer * * * wholesale quantities" for "in connection with the retailer's purchases by a wholesaler" after "any retailer who," substituted "as determined in" for "as defined in section 2" before "subparagraph (10)

(b)," and added "(b)" after "subparagraph (10)."

The 1973 amendment substituted "'department'" for "'board'" and "department of revenue" for "board of equalization" in subdivision (4); and substituted "department" for "board" in subdivisions (10)(b) and (11)(b) and (c).

Cost to Wholesaler

Board of equalization formula requiring cigarette wholesaler to reduce wholesale price by tax discount provided for under section 84-5606.12 was improper because full face value of the tax insignia was to be used in determining wholesale price. *Montana Assn. of Tobacco & Candy Distributors v. State Board of Equalization*, 156 M 108, 476 P 2d 775.

51-304. Practices declared unlawful—penalty—prima facie evidence of unlawful intent. It shall be unlawful and a violation of this act:

(1) For any retailer or wholesaler with intent to injure a competitor or substantially lessen competition;

(a) To advertise, offer to sell or sell, at retail or wholesale, cigarettes at less than cost to such a retailer or wholesaler, as the case may be.

(b) To offer a rebate in price, to give a rebate in price, to offer a concession of any kind, or to give a concession of any kind or nature whatever in connection with the sale of cigarettes if such rebate or concession offered or given in connection with the sale of cigarettes is not offered or given by the wholesaler or retailer in the same ratio with respect to all other merchandise as to which such rebate or concession may lawfully be given which is sold by said wholesaler or retailer in the ordinary course of his trade or business.

(2) For any retailer:

(a) To induce or attempt to induce or to procure or attempt to procure the purchase of cigarettes at a price less than "cost to the wholesaler," as defined in this act.

(b) To induce or attempt to induce or to procure or attempt to procure any rebate or concession of any kind or nature whatever in connection with the purchase of cigarettes.

(3) Any retailer or wholesaler who violates the provisions of this section shall be guilty of a misdemeanor and shall be prosecuted and punished by a fine of not more than five hundred dollars (\$500) for each such offense. Any individual who, as a director, officer, partner, member or agent of any person violating the provisions of this act, assists or aids, directly or indirectly, in such violation, shall, equally with the person for whom he acts, be responsible therefor and subject to the punishment and penalties set forth herein.

(4) Evidence of advertisement, offering to sell or sale of cigarettes by any retailer or wholesaler at less than cost to him, or evidence of any

offer of a rebate in price, or the giving of a rebate in price, or an offer of a concession, or the giving of a concession of any kind or nature whatever in connection with the sale of cigarettes if such rebate or concession offered or given in connection with the sale of cigarettes is not offered or given by the wholesaler or retailer in the same ratio with respect to all other merchandise as to which such rebate or concession may lawfully be given which is sold by said wholesaler or retailer in the ordinary course of his trade or business, or the inducing or attempt to induce, or the procuring or the attempt to procure the purchase of cigarettes at a price less than cost to the wholesaler or the retailer, shall be prima facie evidence of intent to injure competitors or substantially lessen competition.

History: En. Sec. 3, Ch. 258, L. 1965.

51-305. Sales from wholesaler to wholesaler. When one wholesaler sells cigarettes to any other wholesaler, the former shall not be required to include in his selling price to the latter "cost to the wholesaler," as provided by section 2 [51-303], subparagraph (10) of this act, except that no such sale shall be made at a price less than the "basic cost of cigarettes," as defined in said section 2 [51-303], subparagraph (9) of this act, but the latter wholesaler, upon resale to a retailer, shall be considered to be the wholesaler governed by the provisions of said section 2 [51-303], subparagraph (10) of this act.

History: En. Sec. 4, Ch. 258, L. 1965.

51-306. Combination sales. In all advertisements, offers for sale or sales involving two or more items, at least one of which items is cigarettes, at a combined price, and in all advertisements, offers for sale or sales involving the giving of any gift or concession of any kind whatever (whether it be coupons or otherwise) if such rebate or concession offered or given in connection with the sale of cigarettes is not offered or given by the wholesaler or retailer in the same ratio with respect to all other merchandise as to which such rebate or concession may lawfully be given which is sold by said wholesaler or retailer in the ordinary course of his trade or business, the retailer's or wholesaler's combined selling price shall not be below the "cost to the retailer" or the "cost to the wholesaler," respectively, of the total costs of all articles, products, commodities, gifts and concessions included in such transactions.

History: En. Sec. 5, Ch. 258, L. 1965.

51-307. Exceptions. The provisions of this act shall not apply to sales at retail or sales at wholesale made (a) as an isolated transaction and not in the usual course of business; (b) where cigarettes are advertised, offered for sale, or sold in bona fide clearance sales for the purpose of discontinuing trade in such cigarettes and said advertising, offer to sell, or sale, shall state the reason thereof and the quantity of such cigarettes advertised, offered for sale, or sold as imperfect or damaged, and said advertising, offer to sell, or sale, shall state the reason therefor and the quantity of such cigarettes advertised, offered for sale, or to be sold;

(c) where cigarettes are sold upon the final liquidation of a business; or
(d) where cigarettes are advertised, offered for sale, or sold by any fiduciary or other officer acting under the order or direction of any court.

History: En. Sec. 6, Ch. 258, L. 1965.

51-308. Sales to meet competition. (a) Any retailer may advertise, offer to sell, or sell cigarettes at a price made in good faith to meet the price of a competitor who is selling the same article at cost to him as a retailer as prescribed in this act. Any wholesaler may advertise, offer to sell, or sell cigarettes at a price made in good faith to meet the price of a competitor who is rendering the same type of service and is selling the same article at cost to him as a wholesaler, as prescribed in this act. The price of cigarettes advertised, offered for sale, or sold under the exceptions specified in section 6 [51-307] shall not be considered the price of a competitor and shall not be used as a basis for establishing prices below cost, nor shall the price established at a bankrupt sale be considered the price of a competitor within the purview of this section.

(b) In the absence of proof of the "price of a competitor," under this section, the "lowest cost to the retailer," or the "lowest cost to the wholesaler," as the case may be, determined by any "cost survey," made pursuant to section 11 [51-312] of this act, may be considered to be the "price of a competitor," within the meaning of this section.

History: En. Sec. 7, Ch. 258, L. 1965.

51-309. Contracts in violation void. Any contract, expressed or implied, made by any person in violation of any of the provisions of this act, is declared to be an illegal and void contract and no recovery thereon shall be had.

History: En. Sec. 8, Ch. 258, L. 1965.

51-310. Evidence to be considered as bearing on bona fides of cost. (a) In determining "cost to the retailer" and "cost to the wholesaler," the board or a court shall receive and consider as bearing on the bona fides of such cost, evidence tending to show that any person complained against under any of the provisions of this act purchased cigarettes, with respect to the sale of which complaint is made, at a fictitious price, or upon terms, or in such a manner, or under such invoices, as to conceal the true cost, discounts or terms of purchase, and shall also receive and consider as bearing on the bona fides of such cost, evidence of the normal, customary and prevailing terms and discounts in connection with other sales of a similar nature in the trade area or state.

(b) Merchandise given gratis, or payment made to a retailer or wholesaler by the manufacturer thereof for display, or advertising, or promotion purposes or otherwise, shall not be considered in determining the cost of cigarettes to the retailer or wholesaler.

History: En. Sec. 9, Ch. 258, L. 1965.

51-311. Cigarettes purchased outside ordinary trade channels. In establishing the cost of cigarettes to the retailer or wholesaler, the invoice cost of said cigarettes purchased at a forced, bankrupt or closeout sale, or other sale outside of the ordinary channels of trade, may not be used as a basis for justifying a price lower than one based upon the replacement cost of the cigarettes to the retailer or wholesaler in the quantity last purchased, through the ordinary channels of trade.

History: En. Sec. 10, Ch. 258, L. 1965.

51-312. Cost survey. Where a cost survey pursuant to cost accounting practices, including those defined in section 2 [51-303] (10) (a), has been made by the board, or by a trade association or other industry group, for the trading area in which the offense is committed, to establish the lowest "cost to the retailer" and the lowest "cost to the wholesaler," said cost survey shall be considered to be competent evidence for use in proving the cost to the person complained against within the provisions of this act.

History: En. Sec. 11, Ch. 258, L. 1965.

51-313. Civil suits for violation of act. (a) In addition to penalties provided by section 3 [51-304] of this act, any person injured by any violation of this act, or any trade association which is representative of such a person, may maintain an action in any court of equitable jurisdiction to prevent, restrain or enjoin such violation. If in such action a violation of this act shall be established, the court shall enjoin and restrain or otherwise prohibit such violation and, in addition thereto, shall assess in favor of the plaintiff and against the defendant the costs of the suit and reasonable attorney's fee. In such action it shall not be necessary that actual damages to the plaintiff be alleged or proved, but where alleged and proved, the plaintiff in said action, in addition to such injunctive relief and fees and costs of suit, shall be entitled to recover from the defendant the amount of actual damages sustained by the plaintiff.

(b) In the event no injunctive relief is sought or required, any person injured by a violation of this act may maintain an action for damages alone in any court of competent jurisdiction and the measure of damages in such action shall be the same as prescribed in subsection (a) of this section.

History: En. Sec. 12, Ch. 258, L. 1965.

51-314. Powers of board. (a) In addition to the penalties and rights imposed and set forth in sections 3 [51-304] and 12 [51-313] of this act, the board shall enforce the provisions of this act. The board shall have the power to adopt, amend and repeal rules and regulations necessary to enforce and administer the provisions of this act. The board is given full power and authority to revoke or suspend the license or permit of any wholesale or retail cigarette dealer in the state of Montana upon sufficient cause appearing of the violation of this act or upon the failure of such licensee or permittee to comply with any of the provisions of this act.

(b) No license or licenses shall be suspended or revoked except upon notice to the licensee, and after a hearing prescribed by said board at its principal office. The board, upon a finding by it that the licensee has failed to comply with any provisions of this act or any rule or regulation promulgated thereunder, shall, in the case of the first offender, suspend the license or licenses of the said licensee for a period of not less than five (5) nor more than twenty (20) consecutive business days, and, in the case of a second or plural offender, shall suspend said license or licenses for a period of not less than twenty (20) consecutive business days nor more than twelve (12) months, and, in the event the board finds the offender has been guilty of willful and persistent violations, he may revoke such licensee's license or licenses.

(c) Any person whose license or licenses have been so revoked may apply to the board at the expiration of one year for a reinstatement of his license or licenses. Such license or licenses may be reinstated by the board if it shall appear to the satisfaction of said board that the licensee will comply with the provisions of this act and the rules and regulations promulgated thereunder.

(d) No person whose license has been suspended or revoked shall sell cigarettes or permit cigarettes to be sold during the period of such suspension or revocation on the premises occupied by him or upon other premises controlled by him or others or in any other manner or form whatever. Nor shall any disciplinary proceedings or action be barred or abated by the expiration, transfer, surrender, continuance, renewal or extension of any license issued under the provisions of the "cigarette tax law," as provided in articles of chapter 11 of the Revised Codes of Montana, 1947.

Any determination by the board and any order of suspension or revocation of a license or licenses thereunder, or refusal to reinstate a license or licensee after revocation, shall be reviewable by the court in a proper case and in proceedings as provided by the procedural law of this jurisdiction.

History: En. Sec. 13, Ch. 258, L. 1965.

Separability Clause

Section 14 of Ch. 258, Laws 1965 read "Provisions of act severable. The provisions of this act shall be severable and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitutional or void, the re-

mainder of this act shall continue in full force and effect."

Repealing Clause

Section 15 of Ch. 258, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Cross-References

Cigarette tax, secs. 84-5606 to 84-5606.31.

CHAPTER 4—UNFAIR COMPETITION, DISCRIMINATION AND COMBINATIONS IN RESTRAINT OF TRADE

51-401. (10901) Repealed.

Repeal

Section 51-401 (Sec. 1, Ch. 97, L. 1909; Sec. 1, Ch. 102, L. 1967; Sec. 29, Ch. 513,

L. 1973), relating to unlawful trusts and monopolies, was repealed by Sec. 29, Ch. 518, Laws 1977.

51-402. [Transferred.]**Compiler's Notes**

Section 6, Ch. 518, Laws 1977, renumbered this section as Sec. 51-506.

51-403 to 51-410. (10904 to 10911) Repealed.**Repeal**

Sections 51-403 to 51-410 (Secs. 1 to 4, Ch. 7, L. 1913; Secs. 1 to 3, Ch. 8, L. 1913; Secs. 1 to 4, Ch. 80, L. 1917; Sec.

1, Ch. 131, L. 1925; Secs. 23, 24, 29, Ch. 513, L. 1973), relating to unfair practices in the sale of commodities, were repealed by Sec. 29, Ch. 518, Laws 1977.

51-411. [Transferred.]**Compiler's Notes**

Section 16, Ch. 518, Laws 1977, renumbered this section as Sec. 51-516.

51-412. (10913) Repealed.**Repeal**

Section 51-412 (Sec. 2, Ch. 69, L. 1915; Sec. 29, Ch. 513, L. 1973), relating to the penalty for pooling in the purchase, sale

or handling of grain by warehousemen, was repealed by Sec. 29, Ch. 518, Laws 1977.

51-413. [Transferred.]**Compiler's Notes**

Section 17, Ch. 518, Laws 1977, renumbered this section as Sec. 51-517.

51-414. (10915) Repealed.**Repeal**

Section 51-414 (Sec. 2, Ch. 16, L. 1919; Sec. 29, Ch. 513, L. 1973), relating to the

penalty for the destruction of food in restraint of trade, was repealed by Sec. 29 Ch. 518, Laws 1977.

CHAPTER 5—UNFAIR TRADE PRACTICES

Section 51-501. Purpose.

51-502. Definitions.

51-503. Persons responsible.

51-504. Proof of intent.

51-505. Unlawful restraint of trade.

51-506. Labor excepted.

51-507. Unfair competition in sales.

51-508. Unfair competition in purchasing.

51-509. Sales at less than cost forbidden.

51-510. Cost survey as evidence of cost.

51-511. Establishing cost survey.

51-512. Forced sales not basis of cost price.

51-513. Sales excepted.

51-514. Fair price for agricultural products.

51-515. Rebates forbidden.

51-516. Pooling of grain prohibited.

51-517. Destruction of food.

51-518. Alteration of invoices prohibited.

51-519. Enforcement by department.

51-520. Investigations.

51-521. Injunctions—damages—production of evidence.

51-522. Recovery on illegal contracts forbidden.

51-523. Department to institute suit.

51-524. Penalties.

51-501. Purpose. The legislature declares that the purpose of this chapter is to safeguard the public against the creation or perpetuation of monopolies and to foster and encourage competition by prohibiting unfair and discriminatory practices by which fair and honest competition is destroyed or prevented. This chapter shall be literally construed so that its beneficial purposes may be subserved.

History: En. Sec. 14, Ch. 80, L. 1937; Sec. 51-117, R. C. M. 1947; amd. and redes. 51-501 by Sec. 1, Ch. 518, L. 1977.

Amendments

The 1977 amendment renumbered the section; substituted "chapter" for "act" in two places; and made minor changes in phraseology and punctuation.

51-502. Definitions. As used in this chapter, unless the context indicates otherwise, the following definitions apply:

(1) "Department" means the department of business regulation provided for in 82A-401.

(2) "Article of commerce" includes but is not limited to any commodity, product, service or output of a service trade or any product of the soil. A product or service of a public utility is not included within the term "article of commerce".

(3) "Cost" as applied to production includes the cost of raw materials, labor, and all overhead expenses of the producer.

(4) "Cost" as applied to distribution means either the invoice price of the article or product sold or the cost to the dealer or vendor for replacing the article or product in the quantity last purchased within 90 days prior to the sale of the article or product, whichever is lesser, less all trade discounts except customary cash discounts, plus the cost of doing business by the vendor.

(5) "Customary cash discount" means any allowance not exceeding 2%, whether a part of a larger discount or not, made to a wholesale or retail vendor when such vendor pays for merchandise within a limited or specified time.

(6) "Cost of doing business" or "overhead expense" includes all costs of doing business incurred in the conduct of a business and includes, without being limited to, the following items of expense:

- (a) labor (including salaries of executives and officers);
- (b) rent;
- (c) interest on borrowed capital;
- (d) depreciation;
- (e) selling cost;
- (f) maintenance of equipment;
- (g) delivery costs;
- (h) credit losses;
- (i) all types of licenses;
- (j) taxes;
- (k) insurance and advertising.

(7) "Person" includes any person, partnership, firm, corporation, joint-stock company, or other association engaged in business within this state.

(8) "Vendor" includes not only any person acting as one known generally and legally as a vendor but also any person who performs work upon, renovates, alters, or improves any personal property belonging to another person.

(9) "Business" includes any person, as defined in (7), domestic or foreign, engaged in the production, manufacture, distribution, purchasing, or sale of any article of commerce within the state of Montana.

History: En. 51-502 by Sec. 2, Ch. 518, L. 1977.

Title of Act

An act for the recodification and general revision of chapters 1 and 4 of Title

51, R. C. M. 1947, relating to unfair trade practices, and to amend sections 8-103.4, 82A-401.1, 82A-404, and 84-2412, R. C. M. 1947, to strike the reference to Unfair Practices Act.

51-503. Persons responsible. Any person who, either as director, officer, or agent of any firm or corporation or as agent of any person, assists or aids, directly or indirectly, in a violation of this chapter is responsible therefor equally with the person, firm, or corporation for whom or which he acts.

History: En. Sec. 2, Ch. 80, L. 1937; Sec. 51-102, R. C. M. 1947; amd. and redes. 51-503 by Sec. 3, Ch. 518, L. 1977.

Amendments

The 1977 amendment renumbered the section; deleted a second paragraph which

read: "In the prosecution of any person as officer, director or agent, it shall be sufficient to allege and prove the unlawful intent of the person, firm, or corporation for whom or which he acts"; and made minor changes in phraseology and punctuation.

51-504. Proof of intent. In an injunction proceeding or in the prosecution of a person acting as an officer, director, or agent, it is sufficient to allege and prove the unlawful intent of the person, firm, or corporation for whom or which he acts.

History: En. 51-504 by Sec. 4, Ch. 518, L. 1977.

51-505. Unlawful restraint of trade. It is unlawful for a person or group of persons, directly or indirectly:

(1) to enter an agreement for the purpose of fixing the price or regulating the production of an article of commerce;

(2) for the purpose of creating or carrying out any restriction in trade, to:

(a) limit productions;

(b) increase or reduce the price of merchandise or commodities;

(c) prevent competition in the distribution or sale of merchandise or commodities;

(d) fix a standard or figure whereby the price of an article of commerce intended for sale, use, or consumption will be in any way controlled;

(e) agree to add to a bid for any contract an amount, fixed by percentage or otherwise, for the purpose of making a refund or sharing costs of bidding with any other bidder;

(f) return a part of any amount added to a bid by collusive agreement among bidders to any person;

(g) create a monopoly in the manufacture, sale, or transportation of an article of commerce;

(h) enter into an agreement which binds any person not to manufacture, sell, or transport an article of commerce below a common standard or figure or which keeps such article or transportation at a fixed or graduated figure or by which the price of such article is settled so as to preclude unrestricted competition.

History: En. 51-505 by Sec. 5, Ch. 518, L. 1977.

51-506. (10902) Labor excepted. The provisions of 51-505 do not apply to any arrangements, agreement, or combination between laborers made with the object of lessening the number of hours of labor or increasing wages.

History: En. Sec. 2, Ch. 97, L. 1909; re-en. Sec. 10902, R. C. M. 1921; Sec. 94-1105, R. C. M. 1947; redes. 51-402 by Sec. 29, Ch. 513, L. 1973; amd. and redes. 51-506 by Sec. 6, Ch. 518, L. 1977.

Amendments

The 1977 amendment renumbered the section; substituted "51-505" for "this act" near the beginning of the section; and made a minor change in punctuation.

51-507. Unfair competition in sales. (1) It is unlawful for any business, with the intent to destroy the competition of any regular established dealer of any article of commerce or to prevent the competition of any person who in good faith intends or attempts to become such dealer, to discriminate between different localities in this state by selling or furnishing such article at a lower rate in one locality than in another, after making allowance for difference, if any, in the grade, quality, quantity, and actual cost of transportation from the point of production or manufacture of the article.

(2) This section does not prohibit the meeting in good faith of a competitive rate or prevent a reasonable classification of service by public utilities for the purpose of establishing rates.

(3) The prohibition against locality discrimination includes any scheme of special rebates, collateral contracts, or any device of any nature whereby such discrimination is, in substance or fact, effected in violation of the spirit and intent of this section.

(4) Willfully and knowingly advertising, offering for sale, or selling any commodity at less than the price stipulated in a contract entered into under this section, whether or not the person so advertising, offering for sale, or selling is a party to such contract, is unfair competition, and a person damaged thereby may bring an action.

History: En. 51-507 by Sec. 7, Ch. 518, L. 1977.

51-508. Unfair competition in purchasing. (1) Any business which, for the purpose of creating a monopoly or destroying the business of a regularly established dealer or preventing the competition of any person who in good faith intends or attempts to become such dealer discriminates between different persons or localities of this state by purchasing any article of commerce at a higher rate or price in one locality than in another,

after making due allowance for the difference in the actual cost of transportation from the point of purchase to the point of manufacture, sale, storage, or distribution and for the difference in the grade and quality of such article, is guilty of unfair discrimination, which is prohibited and unlawful.

(2) Proof that any person has paid a higher rate or price for any article of commerce in one locality than in another, after making due allowance for the difference in the actual cost of transportation and for the difference in the grade and quality of such article, shall be prima facie evidence of a violation of this section.

(3) The payment of a higher rate or price in one locality than in another, after making such allowance provided above, is not unfair discrimination provided such higher rate or price is paid for the purpose of meeting the rate or price set by a competitor in such locality. The burden of proof of such fact is upon the person charged with unfair discrimination.

History: En. 51-508 by Sec. 8, Ch. 518, L. 1977.

51-509. Sales at less than cost forbidden. It is unlawful for a vendor to sell, offer for sale, or advertise for sale any article of commerce at less than the cost thereof to the vendor, or to give, offer to give, or advertise the intent to give away any article of commerce for the purpose of injuring competitors and destroying competition.

History: En. 51-509 by Sec. 9, Ch. 518, L. 1977.

51-510. Cost survey as evidence of cost. Whenever a particular trade or industry, of which the person complained against is a member, has an established cost survey for the locality in which the offense is committed, such cost survey is competent evidence to be used in proving the costs of the person complained against.

History: En. 51-510 by Sec. 10, Ch. 518, L. 1977.

51-511. Establishing cost survey. (1) The department shall, whenever application has been made by 10 or more persons within a particular trade or business, establish the cost survey provided for in 51-510. When petition for a cost survey has been so presented to the department, the department shall, as soon as possible, fix a time for a public hearing upon the question of whether the cost survey should be established, and if so, upon the matter of establishing such cost survey. The hearing shall be held at the office of the department and upon that notice which the department may require by rule. However, notice of the hearing shall be published for at least 2 successive weeks in the daily newspaper or newspapers as the department may designate as most commonly circulated in the counties to be affected by the cost survey. The notice shall further state the locality or area in respect to which the cost survey is proposed to be established and the particular trade or business to be affected by it.

(2) At the time fixed in the notice any person may appear and be heard by the department upon all questions to be determined by it as

provided in this section. If the department determines that a cost survey should be established, it shall at the same hearing proceed to classify and define the particular trade or business, or parts thereof, to be affected, determine and delimit the particular area within which the trade or business will be affected, and find and determine the probable "cost of doing business" or "overhead expense", stated in percentage of invoice or replacement cost which would probably be incurred by the most efficient person in the trade or business within the area.

(3) If the department determines that the probable "cost of doing business" or "overhead expense" stated in percentage of invoice or replacement cost which would probably be incurred by the most efficient person in the trade or business is the same for the entire state, then the department may, upon proper notice given as provided in this section, create one trade area embracing the entire state.

(4) The percentage so determined shall be presumed to be the actual "cost of doing business" and "overhead expense" of any person in the trade or business and within the area affected by the cost survey.

History: Sec. 12A, Ch. 80, L. 1937 added by Sec. 2, Ch. 50, L. 1939; amd. Sec. 1, Ch. 21, L. 1945; amd. Sec. 2, Ch. 129, L. 1949; amd. Sec. 122, Ch. 431, L. 1975; Sec. 51-114, R. C. M. 1947; amd. and redes. 51-511 by Sec. 11, Ch. 518, L. 1977.

Amendments

The 1975 amendment substituted "department" for references to the Montana trade commission throughout the section; and made minor changes in phraseology, punctuation and style.

The 1977 amendment renumbered the section; deleted references to firms or corporations after references to persons throughout the section; substituted "51-510" for "51-105" at the end of the first sentence; added "and if so, upon the matter of establishing such cost survey" at the end of the second sentence; and made minor changes in phraseology, punctuation and style.

51-512. Forced sales not basis of cost price. In establishing the cost of a given article or product to the distributor and vendor, the invoice cost of the article or product purchased at a forced, bankrupt, closeout, or other sale outside of the ordinary channels of trade may not be used as a basis for justifying a price lower than one based upon the replacement cost as of the date of sale of the article or product replaced through the ordinary channels of trade, unless:

(1) the article or product is kept separate from goods purchased in the ordinary channels of trade;

(2) the article or product is advertised and sold as merchandise purchased at a forced, bankrupt, or closeout sale or by means other than through the ordinary channels of trade, and such advertising states the conditions under which the goods were purchased and the quantity of merchandise to be sold or offered for sale.

History: En. Sec. 4, Ch. 80, L. 1937; Sec. 51-104, R. C. M. 1947; amd. and redes. 51-512 by Sec. 12, Ch. 518, L. 1977.

Amendments

The 1977 amendment renumbered the section; and made minor changes in phraseology, punctuation and style.

51-513. Sales excepted. Sections 51-509, 51-510, and 51-512 do not apply to any sale made:

- (1) in closing out in good faith the owner's stock or any part thereof for the purpose of discontinuing his trade in any article of commerce;
- (2) of seasonal goods;
- (3) in good faith of perishable goods to prevent loss to the vendor by spoilage or depreciation, provided notice is given to the public thereof;
- (4) when the goods are damaged or deteriorated in quality and notice is given to the public thereof;
- (5) by an officer acting under the orders of any court;
- (6) in a good faith endeavor to meet the legal prices of a competitor selling the same article of commerce in the same locality or trade area; or
- (7) to the state of Montana or any of its institutions.

History: En. Sec. 6, Ch. 80, L. 1937; amd. Sec. 1, Ch. 100, L. 1941; Sec. 51-107, R. C. M. 1947; amd. and redes. 51-513 by Sec. 13, Ch. 518, L. 1977.

Amendments

The 1977 amendment renumbered the section; substituted "51-509, 51-510, and 51-512" in the introductory paragraph for "51-103, 51-104, and 51-105"; substituted "article of commerce" at the end of subdivision (1) for "stock or commodity";

substituted "article of commerce" in subdivision (6) for "article or product, or service or output of a service trade"; deleted the last paragraph which read: "Any person, firm or corporation who performs work upon, renovates, alters or improves any personal property belonging to another person, firm or corporation, shall be construed to be a vendor within the meaning of this act"; and made minor changes in phraseology, punctuation and style.

51-514. Fair price for agricultural products. (1) The following method shall be used in determining fair prices for agricultural products sold on local markets in a trade area, district, or city in which the major portion of an agricultural commodity or product is produced within or adjacent to the trade area, city, or district:

(a) When 75% of the producers of an agricultural product or commodity marketing those products or commodities within a trade area, district, or city determine what is a fair price based upon competitive and other factors for their product or commodity, it shall be the fair price for that product or commodity under the terms of this chapter.

(b) Those producers through their agents shall file with the department the fair price and request a hearing for the establishment of fair prices to jobbers, wholesalers, retailers, and consumers of the agricultural products or commodities. An organization representing consumers may not be denied representation at the hearing.

(2) After the establishment of a schedule of fair prices for the agricultural products or commodities, it is a violation of this chapter for a producer, jobber, wholesaler, or retailer to sell or buy an agricultural commodity or product below the price established by the department. Such action is punishable under the terms provided in this chapter.

History: En. Sec. 5-A, Ch. 80, L. 1937; amd. Sec. 120, Ch. 431, L. 1975; Sec. 51-106, R. C. M. 1947; amd. and redes. 51-514 by Sec. 14, Ch. 518, L. 1977.

Amendments

The 1975 amendment divided the section into subsections and subdivisions;

substituted "department" for Montana trade commission" throughout the section; deleted "regular constituted" before "agents" in subdivision (1)(b); and made minor changes in phraseology and punctuation.

The 1977 amendment renumbered the section; substituted "chapter" for "act"

throughout the section; substituted "hearing" for "meeting" at the end of subdivision (1)(b); and made minor changes in phraseology, punctuation and style.

51-515. Rebates forbidden. (1) The secret payment or allowance of rebates, refunds, commissions, or unearned discounts, whether in the form of money or otherwise, or secretly extending to certain purchasers special services or privileges not extended to all purchasers purchasing upon like terms and conditions, to the injury of a competitor and when such payment or allowance tends to destroy competition, is an unfair trade practice and any person resorting to such trade practice is guilty of a misdemeanor and on conviction is subject to the penalties set out in 51-524.

(2) However, nothing in this section prevents a cooperative association, organized and operating on a true cooperative basis, from returning to the members, producers, or consumers the whole or any part of the net earnings or surplus resulting from its trading operations, in proportion to their purchases or sales from, to, or through the association.

History: En. Sec. 7, Ch. 80, L. 1937; Sec. 51-108, R. C. M. 1947; amd. and redes. 51-515 by Sec. 15, Ch. 518, L. 1977.

Amendments

The 1977 amendment renumbered the section; inserted the subsection designations; deleted "firm, partnership, corpora-

tion, or association" after "person" near the end of subsection (1); substituted "51-524" for "51-112" at the end of subsection (1); substituted "section" for "act" near the beginning of subsection (2); and made minor changes in phraseology, punctuation and style.

51-516. (10912) Pooling of grain prohibited. (1) It is unlawful for any person engaged in the buying, selling, or handling of grain in any public local warehouse in this state or for the local agent in charge of such warehouse or any other agent of the person operating the same to enter into a contract, agreement, or understanding with any other person owning or operating any other public local warehouse at any railway station or with its agent whereby:

(a) the amount of grain to be received or handled by the warehouses at such station is to be equalized or pooled between the warehouses;

(b) the profits or earnings derived from the warehouses are to be divided, pooled, or apportioned in any manner; or

(c) the price to be paid for any kind of grain at such station is to be fixed or in any manner affected.

(2) Each day of the continuance of any such agreement, contract, or understanding constitutes a separate offense.

History: En. Sec. 1, Ch. 69, L. 1915; re-en. Sec. 10912, R. C. M. 1921; Sec. 94-1115, R. C. M. 1947; redes. 51-411 by Sec. 29, Ch. 513, L. 1973; amd. and redes. 51-516 by Sec. 16, Ch. 518, L. 1977.

Amendments

The 1977 amendment renumbered the

section; inserted the subsection and subdivision designations; deleted "firm, or corporation" after "person" throughout the section; deleted "combination" after "agreement" in the middle of subsection (1); and made minor changes in phraseology, punctuation and style.

51-517. (10914) Destruction of food. It is unlawful for any person to destroy or to withhold from sale for a period of time which makes it

necessary to destroy, in restraint of trade, any fish, fowl, animal, vegetable, or other product or article which is customary or proper food for human beings and is in fit sanitary condition to be used as such.

History: En. Sec. 1, Ch. 16, L. 1919; re-en. Sec. 10914, R. C. M. 1921; Sec. 94-1117, R. C. M. 1947; redes. 51-413 by Sec. 29, Ch. 513, L. 1973; amd. and redes. 51-517 by Sec. 17, Ch. 518, L. 1977.

Amendments

The 1977 amendment renumbered the section; deleted "firm, or corporation" after "person" near the beginning of the section; deleted "stuff" before "product" in the middle of the section; and made minor changes in phraseology and punctuation.

51-518. Alteration of invoices prohibited. It is unlawful for a person to change, alter, substitute, or falsify an invoice if the practice tends to injure a competitor, destroy competition, or mislead a court or the department. Such practice is unfair trade practice and a person resorting to that trade practice is guilty of a misdemeanor and is subject to the penalties provided in 51-524.

History: En. Sec. 4, Ch. 50, L. 1939; amd. Sec. 124, Ch. 431, L. 1975; Sec. 51-116, R. C. M. 1947; amd. and redes. 51-518 by Sec. 18, Ch. 518, L. 1977.

Amendments

The 1975 amendment substituted "department of business regulation" for "commission" at the end of the first sentence; deleted "on conviction" before "is subject" near the end of the section; and made minor changes in phraseology and punctuation.

The 1977 amendment renumbered the section; deleted "partnership, firm, corporation, joint stock company, or other association, as defined in section 51-103" after "person" near the beginning of the section; deleted "of business regulation" at the end of the first sentence; deleted "firm, partnership, corporation, or association" after "person" in the middle of the second sentence; substituted "51-524" for "51-112" at the end of the section; and made minor changes in phraseology, punctuation and style.

51-519. Enforcement by department. (1) The department shall prevent a person from violating any of the provisions of this chapter.

(2) Upon receiving notice that a person is violating or has violated any of the provisions of this chapter, the department shall immediately direct the person giving the notice either to appear before the director of the department or to make a written reply to show probable cause of a violation. If probable cause is shown, the department shall:

- (a) make its own investigation;
- (b) within 60 days of the finding of probable cause make a written report of its investigation; and
- (c) mail a copy of its findings to the person initially giving notice of a violation.

(3) (a) If the department, after an investigation, has reason to believe that the person has been or is engaging in any course of conduct or doing any act in violation of this chapter and if it appears to the department that a proceeding by it would be in the interest of the public, it shall issue and serve upon the person a complaint stating the charges and containing a notice of a hearing at a place and upon a day not less than 5 days after the service of the complaint.

(b) A complaint may be amended by the department in its discretion at any time 5 days prior to the issuance of an order based on it.

(c) The person so complained against may appear at the place and time so fixed and show cause why an order should not be entered by the department requiring such person to stop the violation of the law charged in the complaint.

(d) Any person may make application and upon good cause shown may be allowed by the department to intervene and appear in the proceeding by counsel or in person.

(e) The testimony in the proceeding shall be reduced to writing and filed with the department.

(f) If upon the hearing the department believes that the act or conduct in question is prohibited by this chapter, it shall make findings of fact in writing and issue and cause to be served on the person charged an order requiring such person to stop the acts or conduct.

(g) Until a transcript of the record in the hearing has been filed in a district court, the department may at any time, upon the notice and in the manner it considers proper, modify or set aside, in whole or in part, a report or an order made or issued by it under this section.

(4) A court reviewing an order of the department may issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public or to competitors pending the outcome of the suit.

(5) To the extent that the order of the department is affirmed, the court shall thereupon issue its own order commanding obedience to the terms of the order of the department.

(6) Proceedings under this section shall be given precedence over other civil cases pending in the district court and shall be in every way expedited.

(7) A person who violates an order of the department after it has become final and while the order is in effect shall forfeit and pay to the state a penalty of not more than \$1,000 for each violation.

(8) The remedies and method of enforcement of this chapter provided for in this section are concurrent and in addition to the other remedies provided in this chapter.

History: En. Sec. 12, Ch. 80, L. 1937; amd. Sec. 1, Ch. 50, L. 1939; amd. Sec. 1, Ch. 142, L. 1967; amd. Sec. 121, Ch. 431, L. 1975; Sec. 51-113, R. C. M. 1947; amd. and redes. 51-519 by Sec. 19, Ch. 518, L. 1977.

Amendments

The 1967 amendment inserted the second sentence in the first paragraph of subsection (1); inserted the first paragraph in subsection (2); substituted "If, after such investigation" for "Whenever" at the beginning of subsection (3); and made minor changes in style.

The 1975 amendment deleted the introductory paragraph of subsection (1) which provided for salaries and meeting times of the Montana trade commission; substituted "department" for references

to the Montana trade commission throughout the section; substituted "before the director of the department" for "at its next regular or special meeting" near the beginning of subsection (2); designated the second paragraph of former subsection (2) as subsection (3) and renumbered subsequent subsections; rewrote subsections (4) through (6); deleted former subsections (6) through (9); redesignated former subsection (10) as (7); designated the last paragraph as subsection (8); and made minor changes in punctuation and phraseology. For prior version, see 51-113 in the parent volume and 1967 amendment note.

The 1977 amendment renumbered the section; deleted references to a firm or corporation after "person" throughout the section; substituted "direct" for "notify"

near the beginning of subsection (2); deleted "to cease and desist" after "department" in subsection (7); deleted "which shall accrue to this state and may be recovered in a civil action brought by this state" at the end of subsection (7);

and made minor changes in phraseology, punctuation and style.

Cross-References

Commission abolished and functions transferred, Sec. 82A-404.

51-520. Investigations. (1) The department, for the purpose of conducting hearings and investigations which in the opinion of the department are necessary and proper for the exercise of the powers vested in it by this chapter, shall at all reasonable times have access to any evidence concerning a person being investigated or proceeded against that relates to any matter under investigation or in question and the right to copy such evidence. The department may issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question before the department or before its duly authorized agent conducting the investigation. An agent, duly authorized by the department for those purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. The attendance of witnesses and the production of evidence may be required from any place in this state at any designated place of hearing.

(2) Upon application by the department in a case of contumacy or refusal to obey a subpoena issued to a person, a district court of this state, within the district where the inquiry is carried on or where a person guilty of contumacy or refusal to obey is found, resides, or transacts business, has jurisdiction to issue to that person an order requiring him to appear before the department or its duly authorized agent and to produce evidence if so ordered or to give testimony regarding the matter under investigation. Failure to obey the order of the court may be punished by the court as a contempt.

(3) A person may not be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpoena of the department on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. An individual may not be prosecuted or subjected to a penalty or forfeiture for or on account of a transaction, matter, or thing concerning which he is compelled to testify or produce evidence, after having claimed his privilege against self-incrimination. An individual so testifying is not exempt from prosecution and punishment for perjury committed in testifying.

History: En. Sec. 3, Ch. 50, L. 1939; amd. Sec. 123, Ch. 431, L. 1975; Sec. 51-115, R. C. M. 1947; amd. and redes. 51-520 by Sec. 20, Ch. 518, L. 1977.

and made minor changes in phraseology, punctuation and style.

The 1977 amendment renumbered the section; deleted "for the purpose of examination" after "access to" in the first sentence; substituted "The department" at the beginning of the second sentence for "Any member of the department"; and made minor changes in phraseology, punctuation and style.

Amendments

The 1975 amendment substituted "department" for references to the Montana trade commission throughout the section;

51-521. Injunctions—damages—production of evidence. (1) Any person if injured thereby, or the attorney general, may maintain an action to

enjoin a continuance of an act in violation of 51-505 through 51-518, and for the recovery of damages. If in such action the court finds that the defendant is violating or has violated any of the provisions of 51-505 through 51-518, it shall enjoin the defendant from a continuance thereof. It is not necessary to allege or prove actual damages to the plaintiff.

(2) In addition to such injunctive relief, the plaintiff is entitled to recover from the defendant three times the amount of actual damages sustained.

(3) A defendant in an action brought under this section may be required to testify under the Montana Rules of Civil Procedure. In addition the books and records of any such defendant may be brought into court and introduced into evidence by reference. No information so obtained may be used against the defendant as a basis for a misdemeanor prosecution under 51-505 through 51-518 and 51-524.

History: En. Sec. 10, Ch. 80, L. 1937; Sec. 51-111, R. C. M. 1947; amd. and redes. 51-521 by Sec. 21, Ch. 518, L. 1977.

Amendments

The 1977 amendment renumbered the section; inserted the subsection designations; deleted "firm, private corporation or municipal or other public corporation, or trade association" after "person" near the beginning of the section; inserted "if

injured thereby, or the attorney general" after "person" near the beginning of the section; substituted "51-505 through 51-518" near the end of the first sentence and in the middle of the second sentence for "51-101 to 51-108"; substituted "51-505 through 51-518 and 51-524" at the end of the section for "51-101 to 51-108, inclusive, and 51-112"; and made minor changes in phraseology, punctuation and style.

51-522. Recovery on illegal contracts forbidden. A contract, express or implied, made by a person in violation of any of the provisions of 51-505 through 51-518 is an illegal contract and no recovery thereon may be made.

History: En. Sec. 9, Ch. 80, L. 1937; Sec. 51-110, R. C. M. 1947; amd. and redes. 51-522 by Sec. 22, Ch. 518, L. 1977.

Amendments

The 1977 amendment renumbered the

section; deleted "firm or corporation" after "person"; substituted "51-505 through 51-518" for "51-101 to 51-108"; and made minor changes in phraseology and style.

51-523. Department to institute suit. Upon the third violation of any of the provisions of 51-505 through 51-518 by any corporation, the department shall institute proper suits or quo warranto proceedings in a court of competent jurisdiction for the forfeiture of its charter, rights, franchises or privileges, and powers exercised by such corporation and to permanently enjoin it from transacting business in this state. If in such action the court finds that the corporation is violating or has violated any of the provisions of 51-505 through 51-518, it shall enjoin the corporation from doing business in this state permanently or for such time as the court orders, or shall annul the charter or revoke the franchise of such corporation.

History: En. Sec. 8, Ch. 80, L. 1937; Sec. 51-109, R. C. M. 1947; amd. and redes. 51-523 by Sec. 23, Ch. 518, L. 1977.

Amendments

The 1977 amendment renumbered the

section; substituted "51-505 through 51-518" in two places for "51-101 to 51-108"; substituted "department" for "attorney general" near the beginning of the section; and made minor changes in phraseology, punctuation and style.

51-524. Penalties. (1) Except as otherwise provided in this section, a person, whether as principal, agent, officer, or director, who violates any of the provisions of 51-505 through 51-518, is guilty of a misdemeanor for each single violation and upon conviction thereof shall be fined not less than \$100 or more than \$1,000 or imprisoned for a term not to exceed 6 months or both.

(2) A violation of 51-505 is punishable by imprisonment in the county jail for a period not less than 24 hours or more than 1 year or by fine not exceeding \$25,000 or both.

(3) When there is a violation of 51-516, in addition to the penalty specified in (1), the court before which a conviction is had shall, within 10 days after judgment of conviction is given, forward a certified copy of the judgment to the department of agriculture, and that department shall revoke any license issued to the person so convicted. In such case no new license may be granted to the person whose license is revoked, nor to anyone either directly or indirectly engaged with him in such business, for a period of 1 year.

History: En. 51-524 by Sec. 24, Ch. 518, L. 1977.

CHAPTER 6—LICENSING OF NEW MOTOR VEHICLE MANUFACTURERS, DISTRIBUTORS, AND IMPORTERS

- Section 51-601. Definitions.
51-602. Persons subject to licensing.
51-603. Administration.
51-604. Filing agreement—product liability.
51-605. Limitations on cancellation and termination.
51-606. Coercion prohibited.
51-607. Penalties.
51-608. Cease and desist orders.
51-609. Definitions.
51-610. Right of designated family member to succeed in dealership ownership.
51-611. Refusal to honor succession to ownership—notice required.
51-612. Procedure to determine right to succeed.
51-613. Written designation of succession unaffected.
51-614. Violation—penalty.
51-615. Civil damages.

51-601. Definitions. As used in this act, the following definitions apply:

(1) “Community” means the relevant market area of a franchise. For the purposes of this act, the relevant market area of a franchise is the county or counties in which the franchisee is located.

(2) “Distributor” or “wholesaler” means a person who sells or distributes new motor vehicles to new motor vehicle dealers in this state or who maintains distributor representatives in this state.

(3) “Distributor branch” means a branch office maintained or availed of by a distributor or wholesaler for the sale of new motor vehicles to new motor vehicle dealers in this state for directing or supervising its representatives in this state.

(4) "Factory branch" means a branch office maintained or availed of by a manufacturer for the sale of new motor vehicles to distributors or for the sale of new motor vehicles to new motor vehicle dealers in this state or for directing or supervising its representatives in this state.

(5) "Franchise" means a contract between or among two or more persons when all of the following conditions are included:

(a) a commercial relationship of definite duration or continuing indefinite duration is involved;

(b) the franchisee is granted the right to offer, sell, and service in this state new motor vehicles manufactured or distributed by the franchisor;

(c) the franchisee, as a separate business, constitutes a component of franchisor's distribution system; and

(d) the operation of the franchisee's business is substantially reliant on the franchisor for the continued supply of new motor vehicles, parts, and accessories.

(6) "Franchisee" means a person who receives new motor vehicles from the franchisor under a franchise and who offers, sells, and services such new motor vehicles to and for the general public.

(7) "Franchisor" means a person who manufactures, imports, or distributes new motor vehicles and who may enter into a franchise.

(8) "Importer" means a person who transports or arranges for the transportation of a foreign manufactured new motor vehicle into the United States for sale in this state.

(9) "Manufacturer" means a person who manufactures or assembles new motor vehicles or who manufactures or installs on previously assembled truck chassis special bodies or equipment, which when installed form an integral part of the new motor vehicle and which constitutes a major manufacturing alteration, but does not include a person who installs a camper on a pickup truck.

(10) "Motor vehicle" means a self-propelled vehicle including without limitation an automobile, motor bus, motorcycle, truck, and a truck-tractor.

(11) "New motor vehicle dealer" means a person who buys, sells, exchanges, or offers or attempts to negotiate a sale or exchange or any interest in or who is engaged in the business of selling new motor vehicles or used motor vehicles taken in trade on new motor vehicles.

(12) "Department" means the department of business regulation.

History: En. 51-601 by Sec. 1, Ch. 380, L. 1977.

Title of Act

An act to regulate the relationship between new motor vehicle dealers and new motor vehicle manufacturers, distributors, and importers; providing for the licensing of new motor vehicle manufacturers, distributors, and importers; providing for administration by the department of business regulation; providing for the regulation and review of transactions between

new motor vehicle dealers and new motor vehicle manufacturers, distributors, and importers; providing for the limitation of new motor vehicle dealer's products liability; providing for notice, hearing, and appeal in disputes between new motor vehicle dealers and new motor vehicle manufacturers, distributors, and importers; prohibiting coercion of new motor vehicle dealers; and providing for civil and criminal penalties; and providing an effective date.

51-602. Persons subject to licensing. (1) No manufacturer, distributor, factory branch, or distributor branch may engage in business in Montana except in accordance with the requirements of this act. The provisions

of this act do not apply to a public officer engaged in the discharge of his official duties or to a trustee, receiver, or other officer acting under the jurisdiction of a court; to financial institutions disposing of repossessed vehicles; or to a person disposing of his personal vehicle. The provisions of this act regulating and licensing manufacturers, distributors, factory branches, distributor branches, and franchisors apply only to those manufacturers, distributors, factory branches, distributor branches, and franchisors of motor vehicles as defined by this act.

(2) A manufacturer, distributor, factory branch, distributor branch, importer, or franchisor transacting business within Montana by offering, selling, trading, consigning, or otherwise transferring a new motor vehicle to a new motor vehicle dealer must be licensed by the state of Montana. The department shall issue licenses to qualified applicants upon receipt of a license fee in the amount of \$15 accompanied by the information required in this section. The following information shall be submitted by an applicant upon forms supplied by the department:

- (a) the name and address of the applicant;
- (b) the make and model of each new motor vehicle to be franchised;
- (c) the name and address of each of the applicant's franchisees within the state; and
- (d) the name and address of each factory branch, distributor branch, agent or representative within the state.

(3) The license may be renewed each year if the applicant is in compliance with the provisions of this act, remits a renewal fee in the amount of \$15, and notifies the department of any changes in the information previously supplied.

(4) No new motor vehicle may be sold in this state unless either the manufacturer on direct dealership of domestic vehicles, the importer of foreign manufactured vehicles on direct dealership, or the distributor on indirect dealerships of either domestic or foreign vehicles is licensed as provided in this act. The obtaining of a license under this act conclusively establishes that a manufacturer, distributor, or importer is subject to the laws of this state regulating manufacturers, importers, and distributors.

History: En. 51-602 by Sec. 2, Ch. 380, L. 1977.

51-603. Administration. The department shall supervise and regulate all persons required by this act to be licensed. In the supervision and regulation thereof the department may:

- (1) make investigations it considers necessary;
- (2) conduct hearings and compel attendance of witnesses at the hearings pursuant to Title 82, chapter 42; and
- (3) prescribe rules it determines necessary to carry out the provisions of this act.

History: En. 51-603 by Sec. 3, Ch. 380, L. 1977.

51-604. Filing agreement—product liability. (1) A franchisee must, at the time he applies for a new motor vehicle dealer license under the provisions of 53-118 file with the department a certified copy of his written

agreement with a manufacturer and a certificate of appointment as dealer or distributor. The certificate of appointment must be signed by an authorized agent of the manufacturer of domestic vehicles whenever there is a direct manufacturer dealer agreement or by an authorized agent of the distributor whenever the manufacturer is wholesaling through an appointed distributorship. The certificate must be signed by an authorized agent of the importer of foreign-made vehicles whenever there is a direct importer-dealer agreement or by an authorized agent of the distributor whenever there is an indirect distributor-dealer agreement. The distributor's certificate of appointment must be signed by an authorized agent of the manufacturer of domestically manufactured vehicles or by an authorized agent of the manufacturer or importer of foreign-made vehicles.

(2) A franchisee need not file a written agreement or certificate of appointment if the manufacturer on direct dealerships or distributor on indirect dealerships or importer on direct dealerships uses the identical basic agreement for all its franchised dealers or distributors in this state and certifies in the certificate of appointment that the blanket agreement is on file and the written agreement with the particular dealer or distributor, respectively, is identical with the filed blanket agreement and that he has filed with the department one such agreement together with a list of franchised dealers or distributors.

(3) A manufacturer, distributor, or importer shall notify the department within 30 days of any revision of or addition to the basic agreement on file or of any franchise supplement to the agreement. Annual renewal of a certificate filed as provided in this section is not required.

(4) A manufacturer on direct dealerships, distributor on indirect dealerships, or importer on direct dealerships who has filed with the department an agreement used by all its franchisees in this state together with a list of all such franchisees and who fails to notify the department within 30 days of any revision, change, or addition thereto is guilty of a misdemeanor and upon conviction shall be fined not to exceed \$500.

(5) A manufacturer must file with the department a copy of the delivery and preparation obligations required to be performed by a dealer prior to the delivery of a new motor vehicle to a buyer. These delivery and preparation obligations constitute the dealer's only responsibility for product liability as between the dealer and the manufacturer. Any mechanical, body, or parts defects arising from an express or implied warranty of the manufacturer constitute the manufacturer's product or warranty liability only; provided, however, that this section shall not effect the obligations of new motor vehicle dealers to perform such warranty repair and maintenance as may be required by law or contract. The manufacturer must compensate an authorized dealer who performs work to rectify the manufacturer's product or warranty defect or delivery and preparation obligations at the dealer's regular established retail rate for similar work.

(6) The dealer must furnish the purchaser of a new vehicle with a signed copy of the manufacturer's delivery and preparation requirements indicating that each of those requirements has been performed.

History: En. 51-604 by Sec. 4, Ch. 380, L. 1977.

51-605. Limitations on cancellation and termination. (1) Notwithstanding the terms, provisions, or conditions of any agreement or franchise, no franchisor may cancel, terminate, or refuse to continue a franchise unless the franchisor has cause for termination or noncontinuance.

(2) No franchisor may enter into a franchise for the purpose of establishing an additional new motor vehicle dealership in any community in which the same line-make is then represented unless there is good cause for an additional new motor vehicle dealership under a franchise and that it is in the public interest.

(3) If a franchisor seeks to terminate or not continue a franchise or seeks to enter into a franchise establishing an additional new motor vehicle dealership of the same line-make, the franchisor shall, not less than 30 days prior to the intended action, and the franchisee may, at any time, file a notice with the department of intention to terminate or not continue the franchise or to enter into a franchise for additional representation of the same line-make. No notice of intention to terminate or not continue a franchise may be required from a franchisor until the conclusion of any review proceeding of that intention offered to the franchisee under the franchise. This section does not apply to an intended termination or noncontinuance of a franchise that the franchisee elects voluntarily, pursuant to a plan established by a franchisor, to submit to binding arbitration.

(4) Upon receiving a notice of intention under the provisions of subsection (3) of this section, the department shall, within 5 days of receipt of a notice of intention, send by certified mail, with return receipt requested, a copy of the notice to the franchisor and to the franchisee whose franchise the franchisor seeks to establish, terminate, or not continue. If the notice states an intent to establish an additional new motor vehicle dealership, a copy of the notice shall be sent within 5 days of receipt to all franchisees in the community who are then engaged in the business of offering to sell or selling the same line-make. Copies of notices shall be addressed to the principal place of business of each recipient and to the statutory agent of each corporate recipient. The department may also give a copy of the franchisor's notice to any other parties whom the department may consider interested persons, such copy to be in the form and substance and given in the manner the department finds appropriate.

(5) A person who receives or is entitled to receive a copy of a notice provided for in subsection (4) of this section may object to the approval of the proposed action by filing a written objection with the department within 15 days from the date the notice was received by the person entitled to receive the notice. If no objection is filed within 15 days from the date the notice was received, the proposed action shall be approved.

(6) If a timely objection has been filed, the department shall enter an order fixing the time, which shall be within 30 days of the date of the order, and place of a hearing on the objection and shall send by certified mail with return receipt requested a copy of the notice provided for in subsection (4) of this section.

(7) The department may upon request continue the date of hearing for a period of 30 days and may upon application, but not ex parte, continue the date of hearing for an additional period of 30 days.

(8) Upon hearing, the franchisor has the burden of proof to establish that good cause exists to terminate or not continue the franchise. When there is an objection to the establishment of a new motor vehicle dealership, the burden of proof that good cause does exist shall be with the franchisor.

(9) The rules of evidence for such hearing shall be those found in Title 82, chapter 42. The department shall reasonably apportion all costs between the parties.

(10) Notwithstanding the terms, provisions, or conditions of an agreement or franchise, the following do not constitute good cause for the termination or noncontinuance of a franchise:

- (a) a change in ownership of the franchisee's dealership;
- (b) the fact that the franchisee refused to purchase or accept delivery of a new motor vehicle, part, accessory, or any other commodity or service not ordered by the franchisee.

(11) In instances where the change in ownership has the effect of the sale of the franchise, the franchisor may not without good cause withhold its consent to the sale. Good cause relates only to the transferee's financial and managerial capabilities or to the inability of the transferee to comply with a state or federal law relating to new motor vehicle dealerships. The burden of establishing good cause is upon the franchisor.

(12) Notwithstanding the terms, provisions, or conditions of an agreement or franchise, in the event of the sale or transfer of ownership of the franchisee's dealership by sale or transfer of the business or by stock transfer to the dealer's spouse, son, or daughter, the franchisor shall give effect to such a change in the franchise unless the transfer of the franchisee's new motor vehicle dealer's license is denied or the new owner is unable to obtain a license under the laws of this state.

(13) The department may issue subpoenas, administer oaths, compel the attendance of witnesses, and production of books, papers, documents, and all other evidence. The department may apply to the district court of the county in which the hearing is held for a court order enforcing this section. The hearing shall be conducted pursuant to Title 82, chapter 42.

(14) If a franchisor enters into or attempts to enter into a franchise, whether upon termination or refusal to continue another franchise or upon the establishment of an additional new motor vehicle dealership in a community where the same line-make is then represented without first complying with the provisions of this act, no license under 53-118 may be issued to that franchisee or proposed franchisee to engage in the business of selling new motor vehicles manufactured or distributed by that franchisor.

(15) In determining whether good cause has been established for terminating or not continuing a franchise, the department shall take into consideration the existing circumstances, including but not limited to:

- (a) amount of business transacted by the franchise;
- (b) investment necessarily made and obligations incurred by the franchisee in the performance of his part of the franchise;
- (c) permanency of the investment;

(d) whether it is injurious to the public welfare for the business of the franchisee to be discontinued;

(e) whether the franchisee has adequate new motor vehicle facilities, equipment, parts, and qualified management, sales, and service personnel to reasonably provide consumer care for the new motor vehicles sold at retail by the franchisee and any other new motor vehicle of the same line-make;

(f) whether the franchisee refuses to honor warranties of the franchisor to be performed by the franchisee if the franchisor reimburses the franchisee for such warranty work performed by the franchisee; and

(g) except as provided in subsection (10) of this section, failure by the franchisee to substantially comply with those requirements of the franchise that are determined by the department to be reasonable and material.

(16) In determining whether good cause has been established for entering into an additional franchise for the same line-make the department shall take into consideration the existing circumstances, including but not limited to:

(a) amount of business transacted by other franchisees of the same line-make in that community;

(b) investment necessarily made and obligations incurred by other franchisees of the same line-make in that community in the performance of their part of their franchises; and

(c) whether the franchisees of the same line-make in that community are providing adequate consumer care for the new motor vehicle products of the line-make which shall include the adequacy of new motor vehicle dealer sales and service facilities, equipment, supply of parts, and qualified management, sales, and service personnel.

(17) A transcript of the testimony of each witness taken at the hearing shall be made and preserved. Within 30 days after the hearing, the department shall make written findings of fact and conclusions and enter a final order.

(18) Any party to the hearing before the department may appeal pursuant to Title 82, chapter 42.

History: En. 51-605 by Sec. 5, Ch. 380, L. 1977.

51-606. Coercion prohibited. (1) A manufacturer of new motor vehicles, factory branch, distributor, distributor branch, importer, field representative, officer, agent, or any representative thereof may not coerce or attempt to coerce a new motor vehicle dealer to accept delivery of a new motor vehicle, a part, or an accessory therefor, or any other commodity that has not been ordered by the dealer.

(2) A manufacturer, factory branch, distributor, distributor branch, importer, field representative, officer, agent or representative thereof may not coerce or attempt to coerce a new motor vehicle dealer to enter into an agreement with such manufacturer, factory branch, distributor, distributor branch, or representative thereof or do any other act unfair to the dealer by:

(a) threatening to cancel or not renew a franchise existing between the manufacturer, factory branch, distributor, distributor branch, or representative thereof and the dealer; or

(b) threatening to withhold, delay, or disrupt the receipt of new motor vehicles or any motor vehicle parts or supplies ordered by the dealer from the manufacturer, factory branch, distributor, distributor branch, importer, or representative or agent thereof.

History: En. 51-606 by Sec. 6, Ch. 380, L. 1977.

51-607. Penalties. (1) A person who violates any provision of this act is guilty of a misdemeanor and upon conviction shall be fined not less than \$500 or more than \$1,000 for each violation. Each day that a violation continues or occurs constitutes a separate violation.

(2) If any new motor vehicle dealer incurs pecuniary loss due to a violation of this act by a manufacturer, distributor, importer, or factory branch or representative or agent thereof, the dealer may recover damages therefor in a court of competent jurisdiction in amount equal to three times the pecuniary loss, together with costs including reasonable attorney's fees.

History: En. 51-607 by Sec. 7, Ch. 380, L. 1977.

51-608. Cease and desist orders. When the department has reasonable cause to believe, from information furnished to or from an investigation made by it, that any person is engaged in any business regulated by this act without being licensed as required, it shall immediately issue and serve upon such person, by certified mail, a cease and desist order, requiring him to cease and desist from further engaging in that business. Upon failure of that person to comply with the order, the department shall file an action in the district court of Lewis and Clark County to restrain and enjoin the person from engaging in the business. The court in the action shall proceed as in other actions for injunctions.

History: En. 51-608 by Sec. 8, Ch. 380, L. 1977.

Effective Date

Section 9 of Ch. 380, Laws 1977 read "This act shall be effective upon passage and approval and shall be applicable to all acts and transactions commenced or completed after such effective date." Approved April 15, 1977.

Separability Clause

Section 10 of Ch. 380, Laws 1977 read "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

51-609. Definitions. As used in 51-609 through 51-615, the following definitions apply:

(1) "Department" means the department of business regulation.

(2) "Dealer" means a person who, for commission or profit, engages in the business of buying, selling, exchanging, or acting as a broker of motor vehicles under a franchise or distribution agreement.

(3) "Designated family member" means the spouse, child, grandchild, parent, brother, or sister of a dealer who, in the case of a deceased dealer,

is entitled to inherit the dealer's ownership interest in the dealership under the terms of the dealer's will, or who has otherwise been designated in writing by a deceased dealer to succeed him in the motor vehicle dealership, or under the laws of intestate succession of this state or who, in the case of an incapacitated dealer, has been appointed by a court as the legal representative of the dealer's property. The term includes the appointed and qualified personal representative and the testamentary trustee of a deceased dealer.

(4) "Person" means an individual, corporation, partnership, association, firm, or other legal entity.

History: En. 51-609 by Sec. 1, Ch. 381, L. 1977.

Title of Act

An act providing for the succession of interest by designated family members to the ownership interests of a motor vehicle dealership upon the death or incompe-

tency of the dealer; providing a method of protest by manufacturers, distributors, or importers; providing notice and opportunity for hearing before the department of business regulation; providing for appeal to the district court; providing penalties and damages; and providing an effective date.

51-610. Right of designated family member to succeed in dealership ownership. (1) Any designated family member of a deceased or incapacitated dealer may succeed the dealer in the ownership or operation of the dealership under the existing franchise or distribution agreement provided he gives the manufacturer, factory branch, distributor, or importer of new motor vehicles written notice of his intention to do so within 120 days of the dealer's death or incapacity and unless there exists good cause for refusal to honor such succession on the part of the manufacturer, factory branch, distributor, or importer.

(2) The manufacturer, factory branch, distributor, or importer may request, and the designated family member shall provide, upon request, personal and financial data that is reasonably necessary to determine whether the succession should be honored.

History: En. 51-610 by Sec. 2, Ch. 381, L. 1977.

51-611. Refusal to honor succession to ownership—notice required. (1) If a manufacturer, factory branch, distributor, or importer believes that good cause exists for refusing to honor the succession to the ownership and operation of a dealership by a family member of a deceased or incapacitated dealer under the existing franchise agreement, the manufacturer, factory branch, distributor, or importer may, within 30 days of receipt of notice of the designated family member's intent to succeed the dealer in the ownership and operation of the dealership, serve upon the designated family member and the department notice of its refusal to honor the succession and of its intent to discontinue the existing franchise agreement with the dealership no sooner than 60 days from the date such notice is served.

(2) The notice must state the specific grounds for the refusal to honor the succession and of its intent to discontinue the existing franchise agreement with the dealership no sooner than 60 days from the date such notice is served.

(3) If notice of refusal and discontinuance is not timely served upon the family member and the department or if the department rules in favor of the complainant in a hearing held pursuant to 51-612, the franchise agreement shall continue in effect subject to termination only as otherwise permitted by law.

History: En. 51-611 by Sec. 3, Ch. 381, L. 1977.

51-612. Procedure to determine right to succeed. (1) Any designated family member who receives notice of the manufacturer's, factory branch, distributor's, or importer's refusal to honor his succession to the ownership and operation of the dealership may, within the 60-day period, file with the department a verified complaint for a hearing and determination by the department on whether good cause exists for refusal and discontinuance.

(2) The manufacturer, factory branch, distributor, or importer must establish good cause for refusal by showing that the succession would be detrimental to the public interest or to the representation of the manufacturer, factory branch, distributor, or importer.

(3) The franchise agreement shall continue in effect until the final determination of the issues raised in the complaint.

(4) If the manufacturer, factory branch, distributor, or importer prevails, the department shall include in its order approving the termination of the franchise agreement reasonable conditions affording the complainant an opportunity to receive fair and reasonable compensation for the value of the dealership.

(5) Any decision by the department may be reviewed pursuant to 82-4216.

History: En. 51-612 by Sec. 4, Ch. 381, L. 1977.

51-613. Written designation of succession unaffected. This act does not preclude a dealer from designating any person as his successor by written instrument filed with the manufacturer, factory branch, distributor, or importer.

History: En. 51-613 by Sec. 5, Ch. 381, L. 1977.

51-614. Violation—penalty. Any person violating the provisions of 51-609 through 51-615 shall, upon conviction, be fined no more than \$5,000.

History: En. 51-614 by Sec. 6, Ch. 381, L. 1977.

51-615. Civil damages. Any dealer suffering pecuniary loss due to a violation of 51-609 through 51-615, upon prevailing in a civil action therefor, is entitled to damages equal to three times the pecuniary loss together with court costs and reasonable attorneys' fees.

History: En. 51-615 by Sec. 7, Ch. 381, L. 1977.

Effective Date

Section 8 of Ch. 381, Laws 1977 read "This act is effective upon passage and approval and shall apply to all acts and transactions commenced or completed after the effective date." Approved April 15, 1977.

Separability Clause

Section 9 of Ch. 381, Laws 1977 read "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

TITLE 52—MORTGAGES

- Chapter 1. Mortgages in general, 52-114, 52-116, 52-117.
2. Mortgages of real property, 52-212.
3. Security interests in personal property, 52-312 to 52-314, 52-319 to 52-323.
4. Small Tract Financing Act, 52-401 to 52-417.

CHAPTER 1—MORTGAGES IN GENERAL

- Section 52-114. Assignment of mortgage—recording—notice—address of assignee prerequisite to recording.
52-116. Recording of subordination or waiver agreements—real estate.
52-117. Uniform Commercial Code—applicability.

52-114. (8259) Assignment of mortgage—recording—notice—address of assignee prerequisite to recording. An assignment of a real estate mortgage may be recorded in like manner as a real estate mortgage and the record thereof shall operate as due and legal notice to the mortgagor and all persons subsequently deriving title to the mortgage from the assignor as well as to all other persons including subsequent purchasers, encumbrancers, mortgagees or other lien holders.

Any such assignment shall contain the assignee's post-office address at his place of residence, and shall not be entitled to be recorded or filed unless it contains such post-office address. [Effective January 1, 1965.]

History: En. Sec. 3823, Civ. C. 1895; re-en. Sec. 5744, Rev. C. 1907; re-en. Sec. 8259, R. C. M. 1921; amd. Sec. 1, Ch. 14, L. 1925; amd. Sec. 1, Ch. 159, L. 1935; amd. Sec. 11-131, Ch. 264, L. 1963. Cal. Civ. C. Sec. 2934.

Amendment

The 1963 amendment deleted "and an assignment of a chattel mortgage may be filed in like manner as a chattel mortgage" before "and the record thereof" in the first paragraph.

52-116. Recording of subordination or waiver agreements—real estate. That a subordination agreement or a waiver in favor of subsequent purchasers, encumbrancers or mortgagees as regards any real estate mortgage of record or the property therein included may be recorded in like manner as a real estate mortgage, and such record shall operate as due and legal notice to the mortgagor and the mortgagee and to all other interested persons. Any such subordination agreement or waiver shall be valid and binding so far as the mortgage therein referred to or the property covered by such mortgage is concerned, when executed by the record holder of the mortgage involved. [Effective January 1, 1965.]

History: En. Sec. 1, Ch. 126, L. 1937; amd. Sec. 11-132, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted "and a subordination agreement or a waiver in favor of subsequent purchasers, encumbrancers or mortgagees as regards any chattel mortgage on file, or the personal

property therein described, may be filed in like manner as a chattel mortgage" before "and such record" in the first sentence; deleted "or such filing as the case may be" after "and such record" in the first sentence; and corrected an apparent typographical error which originated in the Laws of 1937.

52-117. Uniform Commercial Code—applicability. In the event of conflict between any provision of this chapter and the Uniform Commercial Code, the latter shall govern. [Effective January 1, 1965.]

History: En. 52-117 by Sec. 11-133, Ch. 264, L. 1963.

CHAPTER 2—MORTGAGES OF REAL PROPERTY

Section 52-212. Mortgages and deeds of trust covering real and personal property.

52-202. (8263) Form of mortgage.

U.C.C. Financing Statement

A financing statement filed to perfect a security interest in fixtures arising under the U.C.C. does not meet the definitional

requirements of this section, and so cannot be considered a mortgage. *First Security Bank of Bozeman v. Tholkes*, — M —, 547 P 2d 1328.

52-212. (8273) Mortgages and deeds of trust covering real and personal property. All mortgages and deeds of trust covering both real and personal property, executed by a corporation, association or partnership, or by an individual or individuals, are governed by the law relating to mortgages or deeds of trust of real property so far as the real property is concerned, and by the Uniform Commercial Code—Secured Transactions, so far as the personal property is concerned. [Effective January 1, 1965.]

History: En. Sec. 3849, Civ. C. 1895; re-en. Sec. 5756, Rev. C. 1907; amd. Sec. 1, Ch. 72, L. 1921; amd. Sec. 1, Ch. 39, L. 1927; amd. Sec. 1, Ch. 11, L. 1931; amd. Sec. 11-134, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted "or assignments for the benefit of creditors" after "deeds of trust" near the beginning of the section; made minor changes in phraseology; added "so far as the real property is concerned, and by the Uniform Commercial Code—Secured Transactions, so far as the personal property is concerned" at the end of the section; deleted from the end of the section language reading, "and must be recorded

in the office of the county clerk of every county where any part of said property is situated, and the same are valid, notwithstanding the possession of such property is retained by such corporation, association or partnership, or by such individual or individuals, but any such mortgages, deeds of trust, or assignments for the benefit of creditors must be accompanied by the affidavit of good faith required to accompany mortgages of personal property, and also by a receipt for an executed copy of the instrument signed on behalf of the corporation by its president, vice-president, secretary, assistant secretary or managing agent" and three other sentences, for text of which see parent volume.

CHAPTER 3—SECURITY INTERESTS IN PERSONAL PROPERTY

Section 52-312. Foreclosure of security interests in personal property—by action—by sheriff's sale.

52-313. Sales—commencement and postponement.

52-314. Report of sales, and filing thereof.

52-319. Notices of security agreements covering livestock, renewals, assignments and satisfactions to be filed by department of livestock—list to be furnished stock inspectors—livestock markets not liable when notice not filed.

52-320. Contents of notices.

52-321. Duty of secured parties to file satisfactions of security agreements.

52-322. Fees—disposal of.

52-323. Department of livestock not responsible for collection or payment of money under security agreements.

52-301 to 52-311. (8275 to 8285) Repealed.**Repeal**

These sections (Secs. 1, 2, Ch. 81, L. 1907; Secs. 1 to 11, Ch. 86, L. 1913; Sec. 1, Ch. 94, L. 1915; Sec. 1, Ch. 152, L. 1919; Sec. 1, Ch. 183, L. 1919; Sec. 1, Ch. 32, L. 1923; Sec. 1, Ch. 116, L. 1925; Sec. 1, Ch. 36, L. 1941; Sec. 1, Ch. 149, L. 1949;

Secs. 1, 2, Ch. 67, L. 1961), relating to execution, filing, duration, subrogation, protection, and proof of mortgages on personal property, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

52-312. (8286) Foreclosure of security interests in personal property—by action—by sheriff's sale. An action for the foreclosure of a security interest in personal property may be commenced and conducted in the same manner as provided by law for the foreclosure of mortgages upon real property, and the same may be joined in an action for the recovery of the possession of the property subject to the security interest; but the remedial scope of proceedings for the foreclosure of interests subject to the Uniform Commercial Code—Secured Transactions is governed by Part 5 thereof.

A security agreement covering personal property may contain a clause authorizing the sheriff of the county in which said property, or any part thereof, may be, on request of the secured party and the delivery to the sheriff of a copy of such security agreement, to take possession of such property in case of default and to sell the same. If a security agreement contains such clause and if the secured party complies with the terms thereof, it is hereby made the duty of such sheriff, upon the request of the secured party or his legal representative or assigns, to take possession of such property and to advertise and sell the whole or any part of the same; and at such sale the secured party, or his representatives or assigns, may, in good faith, purchase the property so sold, or any part thereof. The sheriff shall require a reasonable indemnity bond from the secured party or his assigns before taking possession of or selling the said property. Notice of sale, application of the proceeds, liability for deficiency, and effect of disposition shall be as provided in section 9-504 [87A-9-504] of the Uniform Commercial Code. [Effective January 1, 1965.]

History: En. Sec. 3872, Civ. C. 1895; re-en. Sec. 5769, Rev. C. 1907; amd. Sec. 12, Ch. 86, L. 1913; re-en. Sec. 8286, R. C. M. 1921; amd. Sec. 11-135, Ch. 264, L. 1963.

Amendments

The 1963 amendment substituted "security interest" for "mortgage" throughout the section and made numerous other changes. For previous text, see parent volume.

Deficiency Judgment after Foreclosure Sale

Deficiency judgment after foreclosure sale was proper even though sale was not public and contract contained clause that "notice [be] given in the manner provided in Section 52-312," since mortgagee was given power of sale by contract, with contract setting forth statute as an acceptable method of sale. *Bell v. Cole*, 154 M 43, 459 P 2d 692.

52-313. (8287) Sales—commencement and postponement. All sales made under the provisions of this act shall be commenced between the hours of nine o'clock in the morning and five o'clock of the afternoon of the day specified in the notice, and within thirty days after the seizure of the property, unless the sale shall be postponed. Any sale may be postponed at the discretion of the sheriff one week, by public announce-

ment at the time designated for the sale to take place when there are no bidders, or when the amount offered is grossly inadequate, or upon the request of the debtor. [Effective January 1, 1965.]

History: En. Sec. 13, Ch. 86, L. 1913; re-en. Sec. 8287, R. C. M. 1921; amd. Sec. 1, Ch. 13, L. 1953; amd. Sec. 11-136, Ch. 264, L. 1963.

Amendments

The 1963 amendment substituted "debtor" for "mortgagor" at the end of the section.

Notice of Sale

Where notice of foreclosure sale of mortgaged sheep was posted out of sight of the actual sale and misnamed the location of the sale, mortgagee had failed to fulfill the strict statutory requirements in enforcing the lien and the sale was void. *Goggins v. Bookout*, 141 M 449, 378 P 2d 212, distinguished in *Bell v. Cole*, 154 M 43, 459 P 2d 692.

52-314. (8288) Report of sales, and filing thereof. Within ten days after the sale of any property subject to a security interest, as herein provided, the person making the sale shall make out in writing a full report, under oath, of all the proceedings in such foreclosure, specifying particularly the property sold, the amount received therefor, the name of the person to whom sold, the amount of the costs and expenses itemized, a copy of the notice of sale, a statement of the manner in which notice of the sale was given, and the disposition made by him of the proceeds of the sale, and shall file the same in the office of the county clerk and recorder, or other filing officer, where the financing statement respecting the security agreement is filed; which report shall be received in all courts as prima-facie evidence of the facts therein stated. The county clerk and recorder or other filing officer shall properly index said report and attach the report of sale to the financing statement on file. [Effective January 1, 1965.]

History: En. Sec. 14, Ch. 86, L. 1913; re-en. Sec. 8288, R. C. M. 1921; amd. Sec. 11-137, Ch. 264, L. 1963.

Amendments

The 1963 amendment substituted "property subject to a security interest" near the beginning of the section for "mortgaged property"; substituted "a statement of the manner in which notice of the sale

was given" for "with the statement that the same was posted as herein provided"; inserted "or other filing officer" after "county clerk and recorder" in two places; substituted "financing statement respecting the security agreement" near the end of the first sentence and "financing statement" in the second sentence for "mortgage."

52-315 to 52-317. (8289 to 8290.1) Repealed.

Repeal

These sections (Secs. 15, 16, Ch. 86, L. 1913; Sec. 1, Ch. 100, L. 1923; Sec. 1, Ch. 3, L. 1941), relating to satisfaction of

chattel mortgages and to mortgages on crops and livestock, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

52-318. (8291) Repealed.

Repeal

Section 52-318 (Sec. 17, Ch. 86, L. 1913; Sec. 2, Ch. 94, L. 1915; Sec. 1, Ch. 125, L. 1915; Sec. 1, Ch. 23, L. 1923), relating to

removal or sale of mortgaged property as a felony or as a misdemeanor, was repealed by Sec. 1, Ch. 367, Laws of 1975.

52-319. (3308.1) Notices of security agreements covering livestock, renewals, assignments and satisfactions to be filed by department of livestock—list to be furnished stock inspectors—livestock markets not liable

when notice not filed. The department of livestock shall accept and file notices of security agreements, renewals, assignments, and satisfactions covering livestock owned by a person, firm, corporation, or association, and bearing his recorded brand, and shall list the notices on the official records of marks and brands kept by it. The department shall also list the notices in the offices of the stock inspectors, employed by the department of livestock and stationed at the central livestock markets where records are kept of marks and brands. All forms on which the notices are given shall be prescribed by the department of livestock and furnished by the secured party, who gives the notice. A livestock market to which livestock is shipped may not be held liable to any secured party for the proceeds of livestock sold through the livestock market by the debtor unless notice of the security agreement is filed as hereinbefore provided.

History: En. Sec. 1, Ch. 91, L. 1935; amd. Sec. 1, Ch. 36, L. 1949; amd. Sec. 11-138, Ch. 264, L. 1963; amd. Sec. 191, Ch. 310, L. 1974.

Amendments

The 1963 amendment substituted "security agreements," "secured party" in two places, "debtor," and "security agreement" respectively for "chattel mortgages," "mortgagee of livestock," "mortgagee," "mortgagor," and "mortgage"; and made a minor change in phraseology.

The 1974 amendment substituted references to "department of livestock" in the caption and first sentence for references to "recorder of marks and brands" and "general recorder of marks and brands of the state of Montana"; substituted references to "department" and "department of livestock" throughout the section for references to "livestock commission"; and made minor changes in phraseology and punctuation.

52-320. (3308.2) Contents of notices. The notices shall consist of a statement showing the date of security agreement, the names and addresses of the debtors and secured parties, or holders and owners thereof, a description of the livestock covered by the security agreement, and in case of notice of renewal, the notice shall state the date of renewal and in the case of a notice of assignment of a security interest, the notice shall state the date of the assignment, and a description of the security agreement to which the assignment is made and the parties to the assignment, and any additional information which is required by the department of livestock.

History: En. Sec. 2, Ch. 91, L. 1935; amd. Sec. 11-139, Ch. 264, L. 1963; amd. Sec. 192, Ch. 310, L. 1974.

Amendments

The 1963 amendment substituted "security interests" for "mortgage" and made

numerous changes in the required contents of the notices.

The 1974 amendment substituted "department of livestock" for "livestock commission of the state of Montana" at the end of the section and made minor changes in phraseology.

52-321. (3308.3) Duty of secured parties to file satisfactions of security agreements. The secured parties, who filed notices of security agreements, renewals, and assignments, with the department of livestock, as provided for in this chapter, shall file notices of satisfaction of the security agreements with the department of livestock immediately upon the satisfaction of the security agreement.

History: En. Sec. 3, Ch. 91, L. 1935; amd. Sec. 11-140, Ch. 264, L. 1963; amd. Sec. 193, Ch. 310, L. 1974.

Amendments

The 1963 amendment substituted "secured parties," "security agreements" in

two places, and "security agreement," respectively, for "mortgagees," "chattel mortgages," "mortgages," and "mortgage."

The 1974 amendment substituted "de-

partment of livestock" for "general recorder of marks and brands" in two places; substituted "this chapter" for "this act"; and made minor changes in phraseology and punctuation.

52-322. (3308.4) Fees—disposal of. The department of livestock shall charge a fee for filing and listing the notices of security agreements for each recorded brand listed in each security agreement and for filing and listing each notice of satisfaction, renewal, or assignment of the security agreement, for each recorded brand listed. The fees shall be set by rules adopted pursuant to the Montana Administrative Procedure Act, upon the basis of actual cost to the department not to exceed \$15 for each brand listed. All fees shall be paid into the earmarked revenue fund for the use of the department of livestock.

History: En. Sec. 4, Ch. 91, L. 1935; amd. Sec. 1, Ch. 135, L. 1953; amd. Sec. 96, Ch. 147, L. 1963; amd. Sec. 11-141, Ch. 264, L. 1963; amd. Sec. 1, Ch. 12, L. 1969; amd. Sec. 194, Ch. 310, L. 1974; amd. Sec. 1, Ch. 11, L. 1977.

Amendments

Chapter 147, Laws 1963, substituted "the earmarked revenue fund for use of the livestock commission" for "the livestock commission fund" at the end of the section.

Chapter 264, Laws 1963, substituted "security agreement" or "security agreements" for "chattel mortgage" or "chattel mortgages" in three places in the first sentence.

The 1969 amendment increased the fil-

ing and listing fees from "one dollar" to "two dollars."

The 1974 amendment substituted "The department of livestock" for "The general recorder of marks and brands" at the beginning of the section; substituted "earmarked revenue fund for the use of the department of livestock" for "earmarked revenue fund for the use of the livestock commission" at the end of the section; and made minor changes in phraseology and punctuation.

The 1977 amendment inserted "a fee" near the beginning of the first sentence; deleted "two dollars (\$2)" before "for each recorded brand" two places in the first sentence; inserted the second sentence; and made a minor change in punctuation.

52-323. (3308.5) Department of livestock not responsible for collection or payment of money under security agreements. The department of livestock, its agents and employees, are not responsible or liable to either debtor or secured party for the collection or payment of any money due the holder of any security agreement covering livestock, or renewals, satisfactions, or assignments thereof as provided in this act, if this act is carried out in good faith.

History: En. Sec. 5, Ch. 91, L. 1935; amd. Sec. 11-142, Ch. 264, L. 1963; amd. Sec. 195, Ch. 310, L. 1974.

Amendments

The 1963 amendment substituted "debtor or secured party" for "mortgagor or mortgagee"; substituted "security agreement covering livestock" for "livestock mortgage"; and deleted the words "on account of the filing and listing of notices

of chattel mortgage" which preceded "or renewals."

The 1974 amendment substituted "Department of livestock" for "Brand recorder or livestock commission" in the caption; substituted "The department of livestock" for "Neither the general recorder of marks and brands nor the livestock commission" at the beginning of the section; and made minor changes in phraseology and punctuation.

CHAPTER 4—SMALL TRACT FINANCING ACT

- Section 52-401. Short title.
 52-402. Declaration of policy.
 52-403. Definitions.
 52-404. Authorization of trust indentures.
 52-405. Qualifications of trustee.
 52-406. Reconveyance upon performance—liability for failure to reconvey.
 52-407. Time within which foreclosure must be commenced.
 52-408. Foreclosure by advertisement and sale.
 52-409. Notice of sale to be mailed, posted, and published.
 52-410. Trustee's deed.
 52-411. Possession.
 52-412. Discontinuance of foreclosure proceedings when entire amount of default paid.
 52-413. Disposition of proceeds of sale.
 52-414. Deficiency judgment not allowed.
 52-415. Requests for copies of notice of sale.
 52-416. Trustee's fees and attorney's fees.
 52-417. Trust indenture deemed to be mortgage on real property.

52-401. Short title. This act may be cited as the "Small Tract Financing Act of Montana."

History: En. Sec. 1, Ch. 177, L. 1963.

Title of Act

An act authorizing the optional use of trust indentures as security instruments in the financing of small tracts embracing three acres of land, or less; providing for the conveyance of title to a trustee to secure the performance of an obligation and for reconveyance upon performance; conferring a power of sale upon the trustee under a trust indenture and prescribing the time and manner in which such power may be exercised; providing for the sale of the property at trustee's sale in the event of default; prescribing the form of notice of sale and providing for the recordation, mailing, posting and publication of notice of sale; providing for

trustee's deeds and the form and effect thereof; providing for the disposition of the proceeds of sale; disallowing deficiency judgment in certain cases; providing for possession following sale; defining the fees and expenses chargeable to the grantor of a trust deed; providing for discontinuance of foreclosure by advertisement and sale; relating to the applicability of mortgage laws to trust indenture transactions; amending sections 93-6005, 93-6006, and 93-6007, R.C.M. 1947, relating to sales of real estate under powers of sale in mortgages and rights of redemption, to exclude therefrom trust indentures as defined in this act; and providing a short title, a severability clause and an effective date.

52-402. Declaration of policy. Because the financing of homes and business expansion is essential to the development of the state of Montana, and because such financing, usually involving areas of real estate of not more than fifteen (15) acres, has been restricted by the laws relating to mortgages of real property, and because more such financing of homes and business expansion is available if the parties can use security instruments and procedures not subject to all the provisions of the mortgage laws, it is hereby declared to be the public policy of the state of Montana to permit the use of trust indentures for estates in real property of not more than fifteen (15) acres as hereinafter provided.

History: En. Sec. 2, Ch. 177, L. 1963; amd. Sec. 1, Ch. 337, L. 1974.

Amendments

The 1974 amendment increased from three acres to fifteen acres the limit on the size of property to be considered under the act.

Constitutionality

This act is not unconstitutional on grounds that it is special legislation favoring rural landowners, that its withdrawal of redemption rights and its notice provisions violate due process, or that it provides for statutory power of sale to be read into all agreements using trust in-

indentures even where agreement between parties does not so provide. *Nat. Bank v. McCormick*, 152 M 319, 448 P 2d 991.

52-403. Definitions. As used in this act, unless the context requires otherwise:

(1) "Beneficiary" means the person named or otherwise designated in a trust indenture as the person for whose benefit a trust indenture is given, or his successor in interest, and who shall not be the trustee.

(2) "Grantor" means the person conveying real property by a trust indenture as security for the performance of an obligation.

(3) "Trust indenture" means an indenture executed in conformity with this act and conveying real property to a trustee in trust to secure the performance of an obligation of the grantor or other person named in the indenture to a beneficiary.

(4) "Trustee" means a person to whom the legal title to real property is conveyed by a trust indenture, or his successor in interest.

(5) "Fifteen (15) acres" means fifteen (15) acres of land. Where the trust indenture states that the real property involved does not exceed fifteen (15) acres, such statement shall be binding upon all parties and conclusive as to compliance with the provisions of this act relative to the power to make a transfer, trust, and power of sale.

History: En. Sec. 3, Ch. 177, L. 1963;
amd. Sec. 2, Ch. 337, L. 1974.

Amendments

The 1974 amendment substituted "fifteen (15) acres" for "three (3) acres" in subdivision (5) and in the final sentence.

52-404. Authorization of trust indentures. Transfers in trust of any interest in real property of an area not exceeding fifteen (15) acres may be made to secure the performance of an obligation of a grantor, or any other person named in the indenture, to a beneficiary; provided that it shall be unlawful to substitute a trust indenture for any mortgage in existence on the effective date of this act. Where any transfer in trust of any interest in real property is hereafter made to secure the performance of such an obligation, a power of sale is hereby conferred upon the trustee to be exercised after a breach of the obligation for which such transfer is security; and a trust indenture executed in conformity with this act may be foreclosed by advertisement and sale in the manner hereinafter provided, or, at the option of the beneficiary, by judicial procedure as provided by law for the foreclosure of mortgages on real property. The power of sale may be exercised by the trustee without express provision therefor in the trust indenture.

History: En. Sec. 4, Ch. 177, L. 1963;
amd. Sec. 3, Ch. 337, L. 1974.

Amendments

The 1974 amendment substituted "not

exceeding fifteen (15) acres" in the first sentence for "not exceeding three (3) acres."

52-405. Qualifications of trustee. (1) The trustee of a trust indenture under this act shall be:

(a) An attorney who is licensed to practice law in Montana; or

(b) A bank, trust company, or savings and loan association authorized to do business in Montana under the laws of Montana or the United States; or

(c) A title insurance or abstract company authorized to do business in Montana under the laws of Montana.

(2) The beneficiary may appoint a successor trustee at any time by filing for record in the office of the clerk and recorder of each county in which the trust property or some part thereof is situated, a substitution of trustee. The substitution shall identify the trust indenture by stating the names of the original parties thereto and the date of recordation and the book and page where the same is recorded, shall state the name and mailing address of the new trustee, and shall be executed and acknowledged by all of the beneficiaries designated in the trust indenture, or their successors in interest. From the time the substitution is filed for record, the new trustee shall be vested with all the power, duties, authority, and title of the trustee named in the trust indenture and of any successor trustee.

History: En. Sec. 5, Ch. 177, L. 1963.

52-406. Reconveyance upon performance—liability for failure to reconvey. Upon performance of the obligation secured by the trust indenture, the trustee upon written request of the beneficiary shall reconvey the interest in real property described in the trust indenture to the grantor. In the event the obligation is performed and the beneficiary refuses to request reconveyance or the trustee refuses to reconvey the property, the beneficiary or trustee so refusing shall be liable as provided by law in the case of refusal to execute a discharge or satisfaction of a mortgage on real property.

History: En. Sec. 6, Ch. 177, L. 1963.

52-407. Time within which foreclosure must be commenced. The foreclosure of a trust indenture by advertisement and sale or by judicial procedure shall be commenced within the time, including extensions, provided by law for the foreclosure of a mortgage on real property.

History: En. Sec. 7, Ch. 177, L. 1963.

52-408. Foreclosure by advertisement and sale. (1) The trustee may foreclose a trust indenture by advertisement and sale under this act if:

(a) The trust indenture, any assignments of the trust indenture by the trustee or the beneficiary, and any appointment of a successor trustee are recorded in the office of the clerk and recorder of each county in which the property described in the trust indenture, or some part thereof, is situated;

(b) There is a default by the grantor or other person owing an obligation, the performance of which is secured by the trust indenture, or by their successors in interest, with respect to any provision in the indenture which authorizes sale in the event of default of such provision; and

(c) The trustee or beneficiary shall have filed for record in the office

of the clerk and recorder in each county where the property described in the indenture, or some part thereof, is situated, a notice of sale, duly executed and acknowledged by such trustee or beneficiary, setting forth:

(i) The names of the grantor, trustee, and beneficiary in the trust indenture and the name of any successor trustee;

(ii) A description of the property covered by the trust indenture;

(iii) The book and page of the mortgage records where the trust indenture is recorded;

(iv) The default for which the foreclosure is made;

(v) The sum owing on the obligation secured by the trust indenture;

(vi) The trustee's or beneficiary's election to sell the property to satisfy the obligation;

(vii) The date of sale, which shall not be less than 120 days subsequent to the date on which the notice of sale is filed for record, and the time of sale, which shall be between the hours of 9:00 a.m. and 4:00 p.m., Mountain Standard Time;

(viii) The place of sale which shall be at the courthouse of the county or one of the counties where the property is situated, or at the location of the property, or at the trustee's usual place of business if within the county or one of the counties where the property is situated.

(2) A trust deed may be foreclosed by advertisement and sale in the manner hereinafter provided.

History: En. Sec. 8, Ch. 177, L. 1963.

52-409. Notice of sale to be mailed, posted, and published. (1) The trustee shall give notice of the sale in the following manner:

(a) At least 120 days before the date fixed for the trustee's sale, a copy of the recorded notice of sale shall be mailed by registered or certified mail to:

(i) the grantor, at the grantor's address as set forth in the trust indenture or (in the event no address of the grantor is set forth in the trust indenture) at the grantor's last known address;

(ii) each person designated in the trust indenture to receive notice of sale whose address is set forth therein, at such address;

(iii) each person who has filed for record a request for a copy of notice of sale within the time and in the manner hereinafter provided, at the address of such person as set forth in such request;

(iv) any successor in interest to the grantor whose interest and address appear of record at the filing date and time of the notice of sale, at such address;

(v) any person having a lien or interest subsequent to the interest of the trustee and whose lien or interest and address appear of record at the filing date and time of the notice of sale, at such address.

(b) At least 20 days before the date fixed for the trustee's sale, a

copy of the recorded notice of sale shall be posted in some conspicuous place on the property to be sold. Upon request of the trustee, the notice of sale shall be posted by a sheriff or constable of the county wherein the property to be sold is located.

(c) A copy of the notice of sale shall be published in a newspaper of general circulation published in any county in which the property, or some part thereof, is situated, at least once each week for 3 successive weeks. If there is no such newspaper, then copies of the notice of sale shall be posted in at least three public places in each county in which the property, or some part thereof, is situated. The posting or the last publication shall be made at least 20 days before the date fixed for the trustee's sale.

(2) On or before the date of sale, there shall be filed for record in the office of the clerk and recorder of each county where the property, or some part thereof, is situated, affidavits of mailing, posting, and publication showing compliance with the requirements of this section. On the date and at the time and place designated in the notice of sale, the trustee or his attorney shall sell the property at public auction to the highest bidder. The property may be sold in one parcel or in separate parcels, and any person, including the beneficiary under the trust indenture but excluding the trustee, may bid at the sale. The person making the sale may, for any cause he deems expedient, postpone the sale for a period not exceeding 15 days by public proclamation at the time and place fixed in the notice of sale. No other notice of the postponed sale need be given.

(3) The purchaser at the sale shall pay the price bid in cash, and, upon receipt of payment, the trustee shall execute and deliver a trustee's deed to the purchaser. In the event the purchaser refuses to pay the purchase price, the person conducting the sale shall have the right to resell the property at any time to the highest bidder. The party refusing to pay shall be liable for any loss occasioned thereby, and the person making the sale may also, in his discretion, thereafter reject any other bid of such person.

History: En. Sec. 9, Ch. 177, L. 1963; **Amendments**
amd. Sec. 1, Ch. 53, L. 1977.

The 1977 amendment added the second sentence to subdivision (1)(b); and made minor changes in punctuation and style.

52-410. Trustee's deed. (1) The trustee's deed to the purchaser at the trustee's sale may contain, in addition to a description of the property conveyed, recitals of compliance with the requirements of this act relating to the exercise of the power of sale and the sale, including recitals of the facts concerning the default, the notice given, the conduct of the sale, and the receipt of the purchase money from the purchaser.

(2) When the trustee's deed is recorded in the deed records of the county or counties where the property described in the deed is situated, the recitals contained in the deed and in the affidavits required under subsection (2) of section 9 [52-409 (2)] of this act, shall be prima-facie evidence in any court of the truth of the matters set forth therein, except that the same shall be conclusive evidence in favor of subsequent bona fide purchasers and encumbrancers for value and without notice.

(3) The trustee's deed shall operate to convey to the purchaser, without right of redemption, the trustee's title and all right, title, interest and claim of the grantor and his successors in interest and of all persons claiming by, through or under them, in and to the property sold including all such right, title, interest and claim in and to such property acquired by the grantor or his successors in interest subsequent to the execution of the trust indenture.

History: En. Sec. 10, Ch. 177, L. 1963.

52-411. Possession. The purchaser at the trustee's sale shall be entitled to possession of the property on the tenth day following the sale, and any persons remaining in possession after that date under any interest, except one prior to the trust indenture, shall be deemed to be tenants at will.

History: En. Sec. 11, Ch. 177, L. 1963.

52-412. Discontinuance of foreclosure proceedings when entire amount of default paid. Whenever all or a portion of any obligation secured by a trust indenture has, prior to the maturity date fixed in such obligation, become due or been declared due by reason of a breach or default in the performance of any obligation secured by the trust indenture, including a default in the payment of interest or of any installment of principal, or by reason of failure of the grantor to pay, in accordance with the terms of such trust indenture, taxes, assessments, premiums for insurance or advances made by the beneficiary in accordance with the terms of such obligation or of such trust indenture, the grantor or his successor in interest in the trust property or any part thereof or any other person having a subordinate lien or encumbrance of record thereon or any beneficiary under a subordinate trust indenture, at any time prior to the time fixed by the trustee for the trustee's sale if the power of sale is to be exercised, may pay to the beneficiary or his successor in interest the entire amount then due under the terms of such trust indenture and the obligation secured thereby (including costs and expenses actually incurred and reasonable trustee's and attorney's fees) other than such portion of the principal as would not then be due had no default occurred, and thereby cure the default theretofore existing, and thereupon all proceedings theretofore had or instituted to foreclose the trust indenture shall be canceled and the obligation and the trust indenture shall be reinstated and shall be and remain in force and effect the same as if no such acceleration had occurred. If the default is cured and the obligation and the trust indenture reinstated in the manner hereinabove provided, the beneficiary, or his assignee, shall, on demand of any person having an interest in the trust property, execute, acknowledge and deliver to him a request that the trustee execute, acknowledge and deliver a cancellation of the recorded notice of sale under such trust indenture. Any beneficiary under a trust indenture, or his assignee, who, for a period of 30 days after such demand refused to request the trustee to execute, acknowledge and deliver such cancellation shall be liable to the person entitled to such request for all damages resulting from such refusal. A cancellation of a recorded notice

of sale shall, when executed and acknowledged, be entitled to be recorded and shall be sufficient if it sets forth a reference to the trust indenture and the book and page where the same is recorded, a reference to the notice of sale and to the book and page where the same is recorded and a statement that such notice of sale is canceled.

History: En. Sec. 12, Ch. 177, L. 1963.

52-413. Disposition of proceeds of sale. The trustee shall apply the proceeds of the trustee's sale as follows: (1) To the costs and expenses of exercising the power of sale and of the sale, including reasonable trustee's fees and attorney's fees;

(2) To the obligation secured by the trust indenture;

(3) The surplus, if any, to the person or persons legally entitled thereto, or the trustee, in his discretion, may deposit such surplus with the clerk and recorder of the county in which the sale took place. Upon depositing such surplus, the trustee shall be discharged from all further responsibility therefor and the clerk and recorder shall deposit the same with the county treasurer subject to the order of the district court of such county.

History: En. Sec. 13, Ch. 177, L. 1963.

52-414. Deficiency judgment not allowed. When a trust indenture executed in conformity with this act is foreclosed by advertisement and sale, no other or further action, suit or proceedings shall be taken, nor judgment entered for any deficiency, against the grantor or his surety, guarantor, or successor in interest, if any, on the note, bond or other obligation secured by the trust indenture, or against any other person obligated on such note, bond or other obligation.

History: En. Sec. 14, Ch. 177, L. 1963.

52-415. Requests for copies of notice of sale. At any time subsequent to the recordation of a trust indenture and prior to the recordation of notice of sale under the indenture, any person desiring a copy of any notice of sale under a trust indenture as provided in subsection (1) of section 9 [52-409(1)] of this act may cause to be filed for record in the office of the county clerk and recorder of the county or counties in which any part or parcel of the real property is situated, a duly acknowledged request for a copy of any notice of sale, showing service upon the trustee. The request shall contain the name and address of the person requesting a copy of the notice and shall identify the trust indenture by stating the names of the parties to the indenture, the date of recordation of the indenture, and the book and page where the indenture is recorded. The county clerk and recorder shall immediately make a cross reference of the request to the trust indenture either on the margin of the page where the trust indenture is recorded or in some other suitable place. No request, statement, or notation placed on the record pursuant to this section shall affect title to the property or be deemed notice to any person that any person so

recording the request has any right, title, interest in, lien, or charge upon the property referred to in the trust indenture.

History: En. Sec. 15, Ch. 177, L. 1963.

52-416. Trustee's fees and attorney's fees. Reasonable trustee's fees and attorney's fees to be charged to the grantor in the event of foreclosure by advertisement and sale shall not exceed, in the aggregate, 5% of the amount due on the obligation, both principal and interest, at the time of the trustee's sale. If prior to the trustee's sale the obligation and the trust indenture shall be reinstated in accordance with provisions of section 12 [52-412] of this act, the reasonable trustee's fees and attorney's fees to be charged to the grantor shall not exceed \$150.00. In no event shall trustee's fees and attorney's fees be charged to a grantor on account of any services rendered prior to the commencement of foreclosure.

History: En. Sec. 16, Ch. 177, L. 1963.

52-417. Trust indenture deemed to be mortgage on real property. A trust indenture is deemed to be a mortgage on real property and is subject to all laws relating to mortgages on real property except to the extent that such laws are inconsistent with the provisions of this act, in which event the provisions of this act shall control. For the purpose of applying the mortgage laws, the grantor in a trust indenture is deemed the mortgagor and the beneficiary is deemed the mortgagee.

History: En. Sec. 17, Ch. 177, L. 1963. } remains in effect in all valid applications that are severable from the invalid applications."

Separability Clause

Section 21 of Ch. 177, Laws 1963 read "Severability clause. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid parts remain in effect. If a part of this act is invalid in one or more of its applications, the part

Effective Date

Section 22 of Ch. 177, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 5, 1963.

TITLE 53—MOTOR VEHICLES

- Chapter 1. Registration of motor vehicles—duties of registrar, 53-101, 53-102, 53-104, 53-106, 53-106.1, 53-106.6 to 53-106.12, 53-107 to 53-109.4, 53-110, 53-112 to 53-115, 53-117, 53-118, 53-119, 53-119.1, 53-120, 53-122, 53-122.1, 53-129, 53-133, 53-136, 53-139, 53-139.1, 53-145 to 53-162.
4. Elimination of reckless driving—responsibility of motor vehicle owners and operators, 53-418, 53-420, 53-428, 53-431, 53-432, 53-438, 53-449, 53-450.
5. State-owned or leased motor vehicles, 53-514 to 53-521.
6. Additional fees or taxes on motor vehicles, 53-639.1, 53-639.2, 53-640, 53-642, 53-644 to 53-647.
7. Reciprocity and proportional registration, 53-701, 53-702, 53-704 to 53-724.
8. Markings on trucks and heavy vehicles, 53-801 to 53-803.
9. Removal and sale of abandoned vehicles, 53-901 to 53-909.
10. Snowmobiles, 53-1012 to 53-1023, 53-1025 to 53-1029.
11. Motor vehicle inspections, Repealed—Section 1, Chapter 237, Laws 1977.

CHAPTER 1—REGISTRATION OF MOTOR VEHICLES— DUTIES OF REGISTRAR

- Section 53-101. Duties of registrar of motor vehicles—records.
- 53-102. Penalty for violations—enforcement of provisions.
- 53-104. "Motor vehicle" defined.
- 53-106. Number plates.
- 53-106.1. Registration of motor vehicles owned and operated solely as collectors' items—number plates for such motor vehicles.
- 53-106.6. Special plates—how affixed to car—sale or transfer of auto—revocation or expiration of radio license.
- 53-106.7. Distinctive plates for national guardsmen.
- 53-106.8. Free license plates to disabled veterans.
- 53-106.9. Nontransferability of disabled veterans' free license plates.
- 53-106.10. Veterans' free plates limited to one automobile or truck.
- 53-106.11. Violations of act or wrongfully attempting to secure veterans' free plates a misdemeanor—penalties.
- 53-106.12. Special parking permits for physically handicapped persons—application, fee, issuance.
- 53-107. Certificates of registration and ownership—contents, issuance, entry, assignment of numbers—owner's registration receipt to be signed, carried and exhibited on demand.
- 53-108. Renewal of registration.
- 53-109. Transfer of title or interest.
- 53-109.1. Used motor vehicles—transfer to and from dealers.
- 53-109.2. Applicability of sticker provisions to new car purchases.
- 53-109.3. Temporary windshield sticker.
- 53-109.4. Grace period—penalty.
- 53-110. Filing of liens, rights, procedure, fees.
- 53-112. Fee for original certificate of ownership and transfer of title.
- 53-113. Lost certificates.
- 53-114. Application for registration of motor vehicles and payment of license fees—requirement of statement or origin—assessment of motor vehicles in the stock of licensed motor vehicle dealers as merchandise.
- 53-115. Time for making application.
- 53-117. Disposition of taxes.
- 53-118. Application for dealer's license.
- 53-118.6 to 53-118.10. [Transferred.]
- 53-119. **Must have license plates.**
- 53-119.1. Special permits for vehicles engaged in a single movement on the highways—fee—limitation—county treasurer to issue.
- 53-120. Replacing number plates.

- 53-122. Registration fees of motor vehicles—registration and transfer thereof—public owned vehicles exempt from license or registration fees—license or registration fees for trailers, house trailers, semitrailers and tractors providing for disposition of all fees.
- 53-122.1. General fund reimbursement.
- 53-129. Foreign vehicles used in gainful occupation—reciprocity board may make reciprocal agreements to exempt.
- 53-133. Definitions.
- 53-136. Alteration or forgery of certificate of title or assignment thereof and penalty therefor.
- 53-139. Penalty for sale of vehicle with engine number altered or changed—application for special number.
- 53-139.1. Penalty for altering identification number.
- 53-145. Expiration of registration on transfer of ownership of vehicle—duty to remove plates.
- 53-146. Transfer of license plates to another motor vehicle.
- 53-147. New registration required for transferred vehicle—grace period—penalty—display of proof of purchase.
- 53-148. Personalized license plates authorized.
- 53-149. Color and design of personalized plates.
- 53-150. Definition of personalized license plates.
- 53-151. Personalized license plates restricted to registered owner.
- 53-152. Application for personalized plates—duplication—good taste.
- 53-153. Fees for personalized plates—disposition.
- 53-154. Definitions.
- 53-155. Registration period based on first registration.
- 53-156. Registration periods designated.
- 53-157. Reregistration on anniversary date—registrar to make rules.
- 53-158. Transitional and new registrations.
- 53-159. When vehicle property tax is due.
- 53-160. Department of revenue and department of highways to make rules.
- 53-161. Proration of taxes and fees.
- 53-162. Assessment on first day of registration period.

53-101. (1755) Duties of registrar of motor vehicles—records. 1. The warden of the state penitentiary shall be, and is hereby constituted the registrar of motor vehicles, trailers and semitrailers, and as such it shall be his duty to keep a record as hereinafter specified of all motor vehicles, trailers and semitrailers of every kind, and certificates of registration and ownership thereof, and of all dealers in motor vehicles.

2. In the case of motor vehicles, trailers and semitrailers, the record shall show the following: Name of owner, residence by town and county, business address, name and address of conditional sales vendor, mortgagee or other lien holder and amount due under contract or lien, manufacturer of car, manufacturer's designation of style of car or vehicle, identifying number, year of manufacture, character of motive power and shipping weight of car as shown by the manufacturer and the distinctive license number assigned such car or vehicle; and, if a truck or trailer, the number of tons capacity, and such other information as may from time to time be found desirable.

3. The registrar shall file applications for registration received by him from the county treasurers of the state and register the vehicles therein described and the owners thereof in suitable books or on index cards, as follows:

(a) Under distinctive license number assigned to vehicle by the county treasurers.

(b) Alphabetically under name of owners.

(c) Numerically under make and identifying number of vehicle.

(d) Such other index of registration as registrar shall deem expedient. Vehicle registration records and indexes, and driver's license records and indexes, may be maintained by electronic recording and storage media.

4. In the case of dealers the records shall show the information contained in the application for dealer's license as required by section 53-118, as well as the distinctive license number assigned to the dealer.

5. The registrar of motor vehicles shall appoint such deputies, subordinate officers, clerks, investigators and other employees as may be necessary to carry out this act, providing there be selected as many of the clerical help from the inmates of the state prison as the registrar determines to be possible.

6. All office equipment, books, files and records belonging to the motor department shall be in the care and general custody and control of the registrar of motor vehicles at the state penitentiary. In order to prevent an accumulation of unneeded records and files the registrar of motor vehicles shall have the authority and it shall be his duty to destroy all records and files which have ceased to be of any value.

7 and 8. * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 75, L. 1917; re-en. Sec. 1755; R. C. M. 1921; amd. Sec. 1, Ch. 177, L. 1925; amd. Sec. 1, Ch. 129, L. 1927; amd. Sec. 1, Ch. 181, L. 1929; amd. Sec. 1, Ch. 159, L. 1933; Subdivisions 5 and 6 amd. Secs. 1, 2, Ch. 62, L. 1943; amd. Sec. 1, Ch. 208, L. 1957; amd. Sec. 22, Ch. 177, L. 1965; amd. Sec. 1, Ch. 256, L. 1965; amd. Sec. 1, Ch. 74, L. 1967; amd. Sec. 1, Ch. 115, L. 1969; amd. Sec. 1, Ch. 207, L. 1969; amd. Sec. 1, Ch. 214, L. 1971; amd. Sec. 7, Ch. 343, L. 1977.

Amendments

Chapter 177, Laws 1965, deleted from the beginning of subsection 5 a sentence reading, "The registrar of motor vehicles shall qualify by giving a bond of twenty-five thousand dollars (\$25,000.00), providing for the faithful performance of his duty"; and substituted "The registrar of motor vehicles" for "He" at the beginning of the present first sentence of subsection 5.

Chapter 256, Laws 1965, substituted "information contained in the application for dealer's license as required by section 53-118, as well as the distinctive license number assigned to the dealer" for "name of the applicant, his residence and address by town and county, his business address, the distinctive number assigned him, and the name or names of new cars handled by him" at the end of subsection 4.

The 1967 amendment deleted "of motor and accessories dealers and of operators and chauffeurs" after "semitrailers"; inserted "and" before "of all dealers"; and deleted "and automobile accessories

and of operators and chauffeurs" after "in motor vehicles" in subsection 1.

Chapter 115, Laws of 1969, substituted "shall be microfilmed and the original destroyed when" for "after the expiration of five (5) years after the date" in subsection (6).

Chapter 207, Laws of 1969, added the second sentence to subsection (3) (d).

The 1971 amendment substituted "unneeded records and files" for "records and files which shall have ceased to be of any value" in the second sentence of subsection 6; and substituted "records and files which have ceased to be of any value" at the end of the subsection 6 for "all correspondence, motor card and application card records after the expiration of five (5) years from the date thereof, and all conditional sales contracts and chattel mortgages and records pertaining thereto shall be microfilmed and the original destroyed when the same have ceased to be liens on the motor vehicles described therein."

The 1977 amendment deleted a former last sentence of subsection (5) reading "The salaries of all such appointees shall be fixed by the registrar of motor vehicles as authorized by the state board of examiners, with respect to salaries of other subordinate state officers and employees."

Cross-References

Bonds of state officers and employees, sec. 6-105 et seq.

Registrar's position abolished and functions transferred, sec. 82A-1205(1).

References: *Western Mutual Ins. Co.*, 142 M 155, 382
Safeco Ins. Co. of America v. North- P 2d 174.

53-102. (1755.1) Penalty for violations—enforcement of provisions. The violation of any of the provisions of sections 53-101, 53-106, 53-106.1, 53-106.2, 53-106.6, 53-107, 53-108, 53-109, 53-114, 53-115, 53-116, 53-117, 53-119, 53-120 and 53-121, shall constitute a misdemeanor and shall be punishable by a fine of not exceeding twenty-five dollars (\$25.00). Nothing herein contained shall prevent the prosecution of a person for an offense committed under any other law.

It is hereby made mandatory upon all police and peace officers of the state, of the counties of the state, and of towns, cities and villages to carry out the provisions of sections 53-101, 53-106, 53-106.1, 53-106.2, 53-106.6, 53-107, 53-108 and 53-109, and sections 53-114 to 53-121.

History: En. Sec. 2, Ch. 158, L. 1931;
 amd. Sec. 1, Ch. 122, L. 1961; amd. Sec.
 2, Ch. 256, L. 1965.

Amendments

The 1965 amendment deleted section 53-118 from the list of sections in the first sentence of the first paragraph.

53-104. (1755.3) "Motor vehicle" defined. The word "motor vehicle" as used in this title shall include trailers, semitrailers, automobiles, auto trucks, motorcycles, cycle motors, and all other vehicles propelled by their own power, used upon the public highways of the state, excepting steam or gas tractors, or self-propelled wheelchairs or similar vehicles operated by invalids.

History: En. Sec. 5, Ch. 158, L. 1931;
 amd. Sec. 1, Ch. 369, L. 1974.

Amendments

The 1974 amendment substituted "this title" for "this act or any of the sections

of this act" near the beginning of the section; added "or self-propelled wheelchairs or similar vehicles operated by invalids" at the end of the section; and made minor changes in phraseology.

53-106. (1757) Number plates. (1) Every motor vehicle which shall be driven upon the streets or highways of this state shall display both front and rear a number plate, bearing the distinctive number assigned such vehicle. Such number plate shall be in eight series: one series for owners of motor cars, one for owners of motor vehicles of the motorcycle type, one for trailers, one for trucks, one for dealers in vehicles of the motorcycle type which shall bear the distinctive letters "MCD" or the letters "MC" and the word "DEALER," one for franchised dealers in new motor cars (including trucks and trailers) or new and used motor cars (including trucks and trailers) which shall bear the distinctive letter "D" or the word "DEALER," one for dealers in used motor cars only (including used trucks and trailers) which shall bear the distinctive letters "UD" or the letter "U" and the word "DEALER," and one for dealers in trailers and/or semitrailers (new or used) which shall bear the distinctive letters "DTR" or the letters "TR" and the word "DEALER," and all such markings for the aforementioned kinds of dealers' plates shall be placed on the number plates assigned thereto in such position thereon as the registrar may designate. All number plates for motor vehicles shall be issued for a minimum period of four years, provided that number plates shall next be

issued in the year 1976 and as often thereafter as is consistent with the provisions of this section, shall bear a distinctive marking, and shall be furnished by the state. In years when number plates are not issued, the registrar shall provide nonremovable stickers bearing appropriate registration numbers which shall be affixed to the license plates in use.

(2) In the case of motor cars and trucks, number plates shall be of metal six inches wide and twelve inches in length, the number plates issued in the year 1976 to be of a graphic design commemorating the bicentennial of the founding of the United States of America, and the word "Montana" with the year placed on the plate. For number plates issued after 1976, the outline of the state of Montana shall be used as a distinctive border on such license plates, and the word "Montana" with the year shall be placed across the bottom of the plate. Such registration plate shall be treated with a reflectorized background material according to specifications prescribed by the registrar. When a new plate is issued, an additional fee of one dollar (\$1.00) per year for each registration of a vehicle shall be added to the registration fee. Revenue from this fee shall be forwarded by the respective county treasurers to the state treasurer for deposit in the motor vehicle recording account of the earmarked revenue fund. Disbursements from the motor vehicle recording account shall be made by warrant drawn by the registrar. The distinctive registration numbers shall begin with a number one (1) or with a letter-number combination such as "A 1" or "AA 1," or any other similar combination of letters and numbers and be numbered consecutively for each series of plates. The distinctive registration number or letter-number combination assigned to the vehicle shall appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal base line, and the county number shall be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of such numerals and letters shall be determined by the registrar of motor vehicles, provided that all county and registration numbers shall be of equal height.

(3) For the use of tax-exempt motor vehicles, in addition to the markings herein provided, number plates shall have thereon the following distinctive markings:

For vehicles owned by the state the registrar of motor vehicles may designate the prefix number for the various state departments, and all numbered plates issued to state departments shall bear the words "State Owned" and no year number will be indicated thereon as these numbered plates will be of a permanent nature, and will be replaced by the registrar of motor vehicles at such time when the physical condition of numbered plates requires same. For vehicles owned by the counties, municipalities, irrigation districts organized under the laws of Montana and not operating for profit, and school districts and used and operated by officials and employees thereof in line of duty as such, and for vehicles on loan from the United States government or the state of Montana, to, or owned by, the civil air patrol and used and operated by officials and employees thereof in the line of duty as such, there shall be placed on the number plates assigned thereto, in such position thereon as the registrar may

designate, the letter "X" or the word "EXEMPT." Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and school districts situated within each of said counties and those of the irrigation districts which obtain plates within each county shall begin with number 1 and be numbered consecutively.

(4) On all number plates assigned to motor vehicles of the truck and trailer type, other than tax-exempt trucks and trailers, there shall appear the letter "T" or the word "TRUCK" for plates assigned to trucks and the letters "TR" or the word "TRAILER" for plates assigned to trailers, and house trailers, and the letters "MC" or the word "CYCLE" for plates assigned to vehicles of the motorcycle type.

Number plates issued to a passenger car, truck, trailer or vehicle of the motorcycle type may be transferred only to a replacement passenger car, truck, trailer or motorcycle type vehicle. No registration or license fee may be assessed upon a transfer of a number plate under 53-146 and 53-147.

(5) For the purpose of this act, the several counties of the state shall be assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56; any new counties shall be assigned numbers by the registrar of motor vehicles as they may be formed, beginning with the number 57.

History: En. Sec. 3, Ch. 75, L. 1917; re-en. Sec. 1757, R. C. M. 1921; amd. Sec. 2, Ch. 158, L. 1933; amd. Sec. 1, Ch. 6, L. 1941; amd. Sec. 3, Ch. 88, L. 1943; amd. Sec. 1, Ch. 111, L. 1951; amd. Sec. 1, Ch. 29, L. 1953; amd. Sec. 1, Ch. 245, L. 1955; amd. Sec. 1, Ch. 236, L. 1957; amd. Sec. 1, Ch. 245, L. 1959; amd. Sec. 1, Ch. 245, L. 1965; amd. Sec. 1, Ch. 41, L. 1967; amd. Sec. 5, Ch. 127, L. 1969; amd. Sec. 1, Ch. 226, L. 1971; amd. Sec. 1, Ch. 41, L. 1975; amd. Sec. 1, Ch. 390, L. 1975; amd. Sec. 1, Ch. 243, L. 1977; amd. Sec. 3, Ch. 492, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 243 and once by Ch. 492. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

The 1965 amendment substituted the

second, third, and fourth sentences of subsection (2) for "Such registration plate and the required serial numbers and letters thereon, shall be of sufficient size and spacing to be plainly readable from a distance of 100 feet during daylight. The registrar shall, in his discretion, choose to select permanent number or identification plates with a yearly insert plate or tab bearing the last two numbers of the year for which such license is issued and such insert plate or tab shall be serially numbered in the same manner as the numbered plates, and such permanent number or identification plates shall be made in such form and of such materials as the registrar shall determine; provided further, that the registrar may, in his discretion, designate number or identification plates for any year as the proper means of identifying the vehicle for a subsequent year or years, said plates to be validated by a windshield sticker of such size, color and design and displayed as he shall direct; such sticker shall bear a distinc-

tive number and the registration period for which it is issued, after which period it shall be unlawful to further display same on the vehicle."

The 1967 amendment substituted "issued every other year" for "renewed annually," and deleted "each year" after "marking" in the third sentence of subsection (1); added the fourth sentence of subsection (1); deleted "and the required serial numbers and letters thereon" after "registration plate" and "or numerals and border" after "material" in the second sentence of subsection (2); substituted "motor vehicle recording account of the earmarked revenue fund. Disbursements from the motor vehicle recording account shall be made by warrant drawn by the registrar" for "general fund of the state of Montana" in the third sentence of subsection (2); and added "and housetrailer" after "trailers" at the end of the first sentence of subsection (4).

The 1969 amendment added the second paragraph in subsection (4).

The 1971 amendment inserted in the second sentence of subsection (1) the provision for distinctive letters for plates issued to dealers in vehicles of the motorcycle type; inserted "provided that number plates will next be issued in the year 1973 and in alternate years thereafter" in the third sentence of subsection (1); added at the end of the first paragraph of subsection (4) the provision for distinctive letters for plates assigned to vehicles of the motorcycle type; inserted references to vehicles of the motorcycle type in two places in the second paragraph of subsection (4); and made minor changes in phraseology and punctuation.

Chapter 41, Laws of 1975, increased the additional fee specified in subsection (2) from 50¢ to \$1.00.

Chapter 390, Laws of 1975, rewrote the next to last sentence in subsection (1) which read: "All number plates for motor vehicles shall be issued every other year, provided that number plates will next be issued in the year 1973 and in alternate years thereafter, shall bear a distinctive marking, and shall be furnished by the state"; substituted "In years when number plates are not issued" in the last sentence of subsection (1) for "In alternate years"; inserted "and trucks" after "motor cars" and inserted "the number plates issued * * * plates issued after 1976" near the beginning of subsection (2); and substituted "separation mark" for "dash or dot" in the next to last sentence of subsection (2).

Chapter 243, Laws of 1977, inserted "When a new plate is issued" at the beginning of the fourth sentence of subsection (2); and added the second sentence of the second paragraph of subsection (4) relating to transfer of a number plate.

Chapter 492, Laws of 1977, inserted "irrigation districts organized under the laws of Montana and not operating for profit" near the beginning of the second sentence of the second paragraph of subsection (3); and inserted "and those of the irrigation districts which obtain plates within each county" near the middle of the third sentence of the second paragraph of subsection (3).

Effective Date

Section 2 of Ch. 41, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved February 16, 1967.

Cross-References

Warden to continue to provide license plates, sec. 82A-1205(1).

53-106.1. Registration of motor vehicles owned and operated solely as collectors' items—number plates for such motor vehicles. Any owner of a motor vehicle manufactured in 1933 or earlier or manufactured in 1934 or later and is more than thirty (30) years old, used solely as a collectors' item and not for general transportation purposes, may file with the registrar of motor vehicles an application for the registration of such motor vehicle stating the name and address of the owner, the name and address of the person from whom purchased, the make of the motor vehicle, the gross weight thereof, the year and number of the model, and the manufacturer's identification number and serial number, and setting forth a specific statement that the vehicle is owned and operated solely as a collectors' item and not for general transportation purposes; and said application shall be sworn to before an officer authorized to administer oaths. The registration fee for all such motor vehicles weighing twenty-eight hundred and fifty (2850) pounds or

less shall be five dollars (\$5.00), and the registration fee for all such motor vehicles weighing more than twenty-eight hundred and fifty (2850) pounds shall be ten dollars (\$10.00).

Upon receipt of said application for registration and payment of the registration fee above provided for the registrar shall file said application and register the motor vehicle therein described in the manner specified in section 53-101, and shall deliver to the applicant:

(1) for motor vehicles manufactured in 1933 or earlier, two (2) license plates bearing the inscription, "Pioneer—Montana" and the registration number; or

(2) for motor vehicles manufactured in 1934 or later and more than thirty (30) years old, two (2) license plates bearing the inscription, "Vintage—Montana" and the registration number. The year of issuance shall not be shown on the plates. No annual renewal of the registration of any such motor vehicle shall be required, and the same shall be valid as long as the vehicle is in existence; provided, however, that upon any sale of such motor vehicle, the purchaser shall be required to renew the registration thereof and pay the license fees hereinbefore specified.

History: En. 53-106.1 by Sec. 1, Ch. 123, L. 1955; amd. Sec. 1, Ch. 86, L. 1963; amd. Sec. 1, Ch. 422, L. 1973.

Amendments

The 1963 amendment substituted "thirty (30) years prior to the year 1963" in the first part of the first paragraph for "thirty (30) years prior to the date of the application referred to hereunder."

The 1973 amendment substituted "manufactured in 1933 or earlier" in the first sentence of the first paragraph for "manufactured more than thirty (30)

years prior to the year 1963"; inserted "or manufactured in 1934 or later and is more than thirty (30) years old" in the first sentence of the first paragraph; inserted "used" before "solely as a collectors' item" in the first sentence of the first paragraph; divided the first sentence of the second paragraph into the preliminary sentence, clause (1) and the sentence following clause (2); inserted "for motor vehicles manufactured in 1933 or earlier" at the beginning of clause (1); inserted clause (2) in the second paragraph; and made minor changes in style.

53-106.6. Special plates—how affixed to car—sale or transfer of auto—revocation or expiration of radio license. The lettered license plates, as herein provided, are to replace the regular license plates on the motor vehicle owned by said amateur radio licensee for such period of time as the amateur radio license is in force under the federal communications commission and the special license issued hereunder is in force, but no longer. Whenever such official amateur radio license is revoked or expires for whatever reason, such license plate shall be removed immediately by the owner of the motor vehicle and the regular plates again placed or mounted on the motor vehicle as in other cases. When the motor vehicle is sold or otherwise transferred, the owner and holder of valid official amateur radio station and operator's license shall have the right to transfer the lettered plates to another motor vehicle owned by him upon such reasonable conditions as may be prescribed by the registrar. On the revocation or expiration of the amateur radio station and operator's licenses, the lettered license plates as issued shall be returned and surrendered to the registrar of motor vehicles.

History: En. Sec. 5, Ch. 2, L. 1957; amd. Sec. 4, Ch. 62, L. 1959; amd. Sec. 6, Ch. 127, L. 1969.

Amendments

The 1969 amendment deleted a requirement that "the regular number plates

shall be mounted on the motor vehicle" upon the transfer or sale of a motor vehicle.

53-106.7. Distinctive plates for national guardsmen. In addition to the regular license plates prescribed by law, there may be issued to each active member of the Montana national guard, distinctive license plates, bearing the words "national guard" and "Montana," said plates to be numbered in sets of two with a different number following the letters "NG." Plates shall be furnished by the registrar of motor vehicles to the adjutant general, and by him, issued to the members of the active guard. The adjutant general shall inform the said registrar of each set so issued, giving the number of the license, the name, unit and home address of the member to whom issued, and shall be responsible for the recovery of said plates and notification to the registrar upon the member becoming ineligible to use them. Plates so issued shall be placed or mounted on the vehicle over the regular license plate, and shall be removed upon sale or other disposition of the vehicle. Said distinctive plates shall be renewed every five (5) years or when lost, destroyed or damaged.

History: En. Sec. 1, Ch. 135, L. 1965; amd. Sec. 1, Ch. 114, L. 1967.

Title of Act

An act to provide for distinctive license plates for motor vehicles owned by active members of the Montana national guard.

Amendments

The 1967 amendment substituted "every five (5) years or when lost, destroyed or damaged" for "concurrently with the issuance of the regular motor vehicle license plates" at the end of this section.

53-106.8. Free license plates to disabled veterans. Any person who is a veteran of the armed service of the United States and 100% disabled because of an injury which has been determined by the veterans administration to be service connected and who is a citizen and resident of the state of Montana and who is the owner of a passenger automobile or of a truck up to, and including, three-quarter ton GVW-rated capacity shall be provided with free license plates upon payment of personal property tax equal to 1% of the taxable value for such automobile or truck upon proof of 100% service-connected disability.

History: En. Sec. 1, Ch. 215, L. 1971; amd. Sec. 1, Ch. 33, L. 1975; amd. Sec. 1, Ch. 67, L. 1977.

Title of Act

An act to provide free license plates to permanently and totally disabled veterans of the armed forces of the United States whose disability is service connected.

Amendments

The 1975 amendment substituted "mo-

tor vehicle" for "automobile" in two places.

The 1977 amendment substituted "100% disabled" for "permanently and totally disabled" near the beginning of the section; substituted "passenger automobile or of a truck up to, and including three-quarter ton GVW-rated capacity" for "motor vehicle" in the middle of the section; substituted "100%" for "permanent and total" near the end of the section; and made minor changes in phraseology, punctuation and style.

53-106.9. Nontransferability of disabled veterans' free license plates. The license issued pursuant to this act shall not be transferable.

History: En. Sec. 2, Ch. 215, L. 1971.

53-106.10. Veterans' free plates limited to one automobile or truck. No disabled veteran is entitled to free license plates for more than one passenger automobile or one truck up to, and including, three-quarter ton GVW-rated capacity.

History: En. Sec. 3, Ch. 215, L. 1971; amd. Sec. 1, Ch. 49, L. 1977; amd. Sec. 2, Ch. 67, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 49 and once by Ch. 67. The code commissioner has made a composite section embodying some, but not all, the changes made by both amendments.

Amendments

Chapter 49, Laws of 1977, substituted "motor vehicle" for "automobile" at the end of the section; and made a minor change in phraseology.

Chapter 67, Laws of 1977, substituted "passenger automobile or one truck up to three-quarter ton GVW-rated capacity" at the end of the section for "automobile"; and made a minor change in phraseology.

53-106.11. Violations of act or wrongfully attempting to secure veterans' free plates a misdemeanor—penalties. Any person who violates this act or who knowingly and wrongfully attempts to secure free license plates under this act shall be guilty of a misdemeanor and punished by a fine of not less than one hundred dollars (\$100) or imprisonment for not more than thirty (30) days or both.

History: En. Sec. 4, Ch. 215, L. 1971.

53-106.12. Special parking permits for physically handicapped persons—application, fee, issuance. (1) The registrar's bureau, department of justice, shall issue a special parking permit to a person who:

(a) holds a valid Montana driver's license and owns a motor vehicle, other than a commercial vehicle, and has a permanent physical handicap that impairs his mobility when not in a motor vehicle; or

(b) regardless of whether he holds a driver's license or owns a motor vehicle, has a permanent physical handicap that impairs his driving ability and impairs his mobility when not in a motor vehicle to such an extent that he needs to be driven by another person to a destination.

(2) The parking permit issued under this section, when displayed, entitles a person to park a motor vehicle in special parking spaces reserved for handicapped persons.

(3) The registrar's bureau shall provide a card or plate that may be displayed in a motor vehicle to indicate a parking privilege granted under this section. The card or plate shall be prominently displayed in the windshield of a vehicle when the parking privilege is being used.

(4) Applications for a special parking permit may be made to the registrar's bureau on forms provided by the bureau, which must require sufficient information to determine eligibility for a permit. The application must be accompanied by:

(a) a certificate from a licensed physician describing the extent of the applicant's disability; and

(b) a fee of \$1.

(5) Applications shall be available at the office of the county treasurer in each county and directly from the registrar's bureau.

(6) No one applicant may receive more than one permit.

(7) A permit expires on December 31 of the year of issue.

History: En. 53-106.12 by Sec. 1, Ch. 31, L. 1977.

Title of Act

An act to provide for a special parking

permit to be available to handicapped persons so there may be one recognizable statewide standard permitting a handicapped person to park a vehicle in a space reserved for use by the handicapped.

53-107. (1758) Certificates of registration and ownership—contents, issuance, entry, assignment of numbers—owner's registration receipt to be signed, carried and exhibited on demand. Upon completion of the application for registration, on forms furnished by the registrar of motor vehicles, the county treasurer shall issue to the applicant two (2) copies of the application marked "Owner's Certificate of Registration and Tax Receipt," one (1) of which shall be marked "File copy," and forward one (1) copy of the application to the registrar of motor vehicles who shall cause to be entered the information contained in said application upon the corresponding records of his office and shall furnish the applicant a certificate of ownership subject to the provisions of section 53-110. Said certificate of registration and ownership shall meet the following requirements:

The certificate of registration and the certificate of ownership shall each contain upon the face thereof: (1) the date issued, (2) the registration number assigned to the owner and the vehicle, (3) the name and complete address of the owner, or the names and addresses of joint owners, and the name and complete address of any conditional sales vendor, and also the name and address of any other lienor as shown by said application, (4) a description of the registered vehicle including the year built and serial number, if any, (5) any lien against such motor vehicle and the amount due at the date of registration, and such other statement of facts as may be determined by the registrar.

When the names and addresses of more than one owner who are members of the same immediate family are listed on the certificate of ownership, joint ownership with right of survivorship, and not as tenants in common, is presumed.

Upon receipt of the application the registrar shall make a recheck of the application and in the event that there is any error in the application it may be returned to the county treasurer to effectively secure the correction of such error, who shall return the same to the registrar of motor vehicles.

The certificate of ownership shall contain a form of notice to the registrar of a transfer of title or interest of the owner and such other statement on forms as may be determined by the registrar.

File copy of owner's certificate of registration receipt to be signed, carried, and exhibited on demand. Every owner, upon receiving a registration receipt shall write his signature thereon with pen and ink in the space provided. Every such registration receipt or a notarized photostatic copy thereof or a duplicate thereof furnished by the registrar of motor vehicles shall at all times be carried in the vehicle, to which it refers or shall be carried by the person driving or in control of such vehicle, who shall display the same upon demand of a police officer or any officer or employee of the registrar of motor vehicles or the highway department.

The term "motor vehicle" includes automobile, truck, motorcycle-type vehicle, and semitrailer, trailer and trailer-house.

Any trailer, semitrailer or trailer-house which does not have a manufacturer's or other identifying number thereon shall be assigned an identification number by the registrar upon registration of such motor vehicle. The owner or other person lawfully in possession of such motor vehicle shall stamp such number so assigned by the registrar upon the principal right frame member of said motor vehicle near the front end thereof where it may be clearly and readily seen, and said stamping shall be promptly accomplished after notice of the assigned number by the registrar. The registrar may withhold registration until satisfactory proof by affidavit, of such stamping is filed with him.

Any person violating this section shall be deemed guilty of a misdemeanor and shall be punished by a fine of not exceeding twenty-five dollars (\$25.00).

History: En. Sec. 4, Ch. 75, L. 1917; re-en. Sec. 1758, R. C. M. 1921; amd. Sec. 2, Ch. 159, L. 1933; amd. Sec. 5, Ch. 72, L. 1937; amd. Sec. 1, Ch. 148, L. 1943; amd. Sec. 1, Ch. 63, L. 1945; amd. Sec. 1, Ch. 115, L. 1953; amd. Sec. 1, Ch. 200, L. 1955; amd. Sec. 1, Ch. 139, L. 1961; amd. Sec. 7, Ch. 127, L. 1969; amd. Sec. 1, Ch. 179, L. 1971; amd. Sec. 1, Ch. 104, L. 1975.

Amendments

The 1969 amendment deleted exceptions relating to the owners of passenger cars, pickups and farm trucks in the fifth paragraph of the section.

The 1971 amendment deleted "in quintuplet" after "application for registration" near the beginning of the section; substituted "subject to the provisions of section 53-110" at the end of the first sentence of the first paragraph for "and said owner shall at all times retain possession of the certificate of ownership, except when the same is being transmitted to and from the registrar of motor vehicles for endorsement or cancellation. In the event the said certificate of ownership be in the possession or under the control of any person other than the person entitled to operate and possess the motor vehicle the same

must be surrendered to the person entitled to operate and possess such motor vehicle, upon demand, and refusal shall constitute a misdemeanor. At the same time, he shall issue to any conditional sales vendor, or other person holding the legal title to the vehicle, or any mortgagee thereof, or any other lien holder, a statement of the filing of such conditional sales contract, mortgage or other lien"; deleted "The reverse side of" at the beginning of the fifth paragraph; substituted "motorcycle-type vehicle" for "motorcycle" in the seventh paragraph; and made minor changes in style.

The 1975 amendment inserted "or the names and addresses of joint owners" after "address of the owner" in item (3) of the second paragraph; and inserted the third paragraph.

Cross-References

Registrar's position abolished and functions transferred, sec. 82A-1205 (1).

References

Safeco Ins. Co. of America v. Northwestern Mutual Ins. Co., 142 M 155, 382 P 2d 174.

53-108. (1758.1) Renewal of registration. Except as provided in sections 53-154 through 53-162, every vehicle registration under this chapter shall expire on December thirty-first of each year and shall be renewed annually upon application and payment of license fees, as provided in sections 53-114 and 53-122, such renewal to take effect on the first day of January of each year. The certificate of registration issued hereunder shall be valid during the registration year only for which issued, and the certificates of ownership shall remain valid until canceled by the registrar of motor vehicles upon a transfer of any interest shown therein and need not be renewed annually.

The owner of a vehicle registered under the provisions of this act shall be entitled to operate such vehicles between January first and February fifteenth without displaying the registration certificate of the current year, on condition that such owner shall, during said period, display upon such vehicle the number plates or plate assigned thereto for the previous year.

History: En. Subd. 2, Sec. 2, Ch. 159, L. 1933; amd. Sec. 1, Ch. 244, L. 1955; amd. Sec. 1, Ch. 146, L. 1957; amd. Sec. 1, Ch. 100, L. 1959; amd. Sec. 25, Ch. 121, L. 1965; amd. Sec. 1, Ch. 116, L. 1969; amd. Sec. 8, Ch. 127, L. 1969; amd. Sec. 1, Ch. 138, L. 1971; amd. Sec. 2, Ch. 214, L. 1971; amd. Sec. 11, Ch. 74, L. 1975.

Amendments

The 1965 amendment increased the fee for temporary windshield stickers provided for by the former third paragraph from \$1.00 to \$2.00; and substituted "registrar of motor vehicles" for "board" in two places in the same paragraph.

Chapter 116, Laws of 1969, deleted language restricting the application of the former third paragraph to purchasers from licensed dealers; and extended the life of the temporary windshield stickers from 30 days to 60 days.

Chapter 127, Laws of 1969, deleted from the former third paragraph language requiring display of the previous year's number plates with the temporary windshield sticker; extended the grace period

for application for registration from three days to ten days; and made the grace period applicable to used as well as new vehicles.

Chapter 138, Laws of 1971, deleted the former third paragraph providing for temporary windshield stickers.

Chapter 214, Laws of 1971, deleted from the first paragraph a final sentence reading "Upon annual renewal, whenever the legal owner of the vehicle is other than the registered owner, the registrar of motor vehicles shall immediately notify such legal owner by mail of the registration number assigned to such vehicle for the ensuing year"; and made minor changes in punctuation and style.

The 1975 amendment inserted "Except as provided in sections 53-154 through 53-162" at the beginning of the section; and made minor changes in phraseology.

References

Safeco Ins. Co. of America v. Northwestern Mutual Ins. Co., 142 M 155, 382 P 2d 174.

53-109. (1758.2) Transfer of title or interests. (1) Upon a transfer of any title or interest of an owner in or to a motor vehicle registered under the provisions of this act as hereinbefore required, the person whose title or interest is to be transferred shall write his signature with pen and ink upon the certificate of ownership issued for such vehicle in the appropriate space provided upon the reverse side of such certificate, and such signature shall be acknowledged before a notary public.

(2) Within 20 calendar days thereafter, the transferee shall forward both the certificate of ownership so endorsed and the certificate of registration, together with the information required under 53-107, to the county treasurer, who shall forward the same to the registrar, and no certificate of ownership and certificate of registration may be issued by the registrar of motor vehicles until the outstanding certificates are surrendered to that office or their loss established to his reasonable satisfaction. Failure to make such application within the 20-day grace period subjects the transferee to a penalty of \$10. The penalty is to be collected by the county treasurer at the time of registration and is in addition to the fees otherwise provided by law.

(3) In the event of a transfer by operation of law of any title or interest of an owner of the legal title or owner in and to a motor vehicle as upon inheritance, devise, or bequest, order in bankruptcy or insolvency, execution sale, repossession upon default in the performance of the terms

of a lease or executory sales contract, or otherwise than by voluntary act of the person whose title or interest is so transferred, the executor, administrator, receiver, trustee, sheriff or other representative or successor in interest of the person whose title or interest is so transferred shall forward to the registrar of motor vehicles an application for registration in the form required for an original application for registration, together with a verified or certified statement of the transfer of such title or interest which statement shall set forth the reason for such involuntary transfer, the title or interest so transferred, the name or names of the person or persons to whom such title or interest is to be transferred, the process of procedure effecting such transfer, and such other information as may be requested by the registrar and with such statement shall be furnished such evidence and instruments as may otherwise be required by law to effect a transfer of legal or equitable title to or an interest in chattels as may be required in such cases, and in the event the registrar shall be satisfied that such transfer is regular and that all formalities as required by law have been complied with, he shall cause to be sent to the owner, conditional sales vendors, lessors, mortgages, and other lienors, as shown by his records notice of such intended transfer and thereafter, but not less than 5 days thereafter, shall register such motor vehicle and shall issue a new certificate of ownership and certificate of registration to the person or persons entitled thereto. The notice herein required shall be deemed complied with by deposit in the post office in Deer Lodge, Montana, such notice postage prepaid, addressed to such person or persons at the respective addresses shown on his records.

(4) When the vehicle title that is involuntarily transferred is not registered in this state the procedure set forth above must be followed in applying for a new certificate of ownership and certificate of registration, but the registrar need not send notice of intended transfer and shall issue a new certificate of ownership and a new certificate of registration to the person entitled thereto.

(5) In the event of the death of an owner of one or more motor vehicles and/or trailer and/or semitrailer and/or trailer-house registered hereunder and not exceeding the value of \$4,000, without leaving other property necessitating the procuring of letters of administration or letters testamentary, then the surviving husband or wife, or other heir, unless such property is by will otherwise bequeathed, may secure transfer of the certificate of ownership and the certificate of registration of the deceased, in and to such motor vehicle in the name of the surviving husband or wife or other heir, as above mentioned, upon filing with the registrar an affidavit of such person setting forth the fact of survivorship and the name and address of any other heirs and such facts as are hereby made necessary to entitle the affiant to a transfer and thereupon the registrar is authorized to make such transfer of the certificate of ownership and certificate of registration, subject to all contracts, leases, mortgages, or other liens as shown by his records.

(6) Nothing in the foregoing subdivision of this section shall prevent any conditional sales vendor, mortgagee, or other lienor from assigning his interest or title in or to a motor vehicle registered under the provisions

of this act to any other person without the consent of and without effecting the interest of the holder of the certificate of ownership and certificate of registration. Upon any conditional sales vendor, mortgagee, or other lienor assigning his interest in any motor vehicle registered under this act a copy of such assignment must be filed with the registrar and record thereof made upon his records.

(7) Every person who transfers any motor vehicle to a junk dealer for the purpose of scrapping said vehicle shall so notify the registrar and deliver the certificate of ownership and certificate of registration to the registrar for cancellation.

History: En. Subd. 3, Sec. 2, Ch. 159, L. 1933; amd. Sec. 6, Ch. 72, L. 1937; amd. Sec. 2, Ch. 148, L. 1943; amd. Sec. 2, Ch. 63, L. 1945; amd. Sec. 1, Ch. 191, L. 1967; amd. Sec. 1, Ch. 213, L. 1969; amd. Sec. 2, Ch. 138, L. 1971; amd. Sec. 1, Ch. 399, L. 1977.

Amendments

The 1967 amendment deleted "registered under the provisions of this act" after "motor vehicle" near the beginning of the first paragraph of former subsection (e), now subsection (c); and inserted the present second paragraph in former subsection (e), now subsection (c).

The 1969 amendment increased the maximum value specified in the third paragraph of former subsection (e), now subsection (c), from \$1,000 to \$4,000.

The 1971 amendment substituted "county treasurer, who shall forward the same to the registrar" in the first sentence of subsection (b) for "registrar, who shall

file the same upon receipt thereof"; added the second sentence to subsection (b); deleted former subsections (c) and (d); and redesignated former subsections (e) and (f) as (c) and (d), respectively.

The 1977 amendment redesignated former subsections (a) and (b) as subsections (1) and (2); redesignated the four paragraphs of former subsection (c) as subsections (3) through (6); redesignated subsection (d) as subsection (7); substituted "Within 20 calendar days" at the beginning of subsection (2) for "Within ten (10) days"; deleted a provision for an additional penalty of \$1.00 for each additional day beyond the grace period to a maximum of \$25 in the second sentence of subsection (2); and made minor changes in phraseology and punctuation.

References

Interstate Mfg. Co. v. Interstate Products Co., 146 M 449, 408 P 2d 478.

DECISIONS UNDER FORMER LAW

Insurance Coverage

Although ownership of automobile had remained with car dealer after the sale because of failure to send certificates of change of ownership to the registrar of motor vehicles, dealer's liability insurance

which was limited in its coverage did not insure motorist who had purchased vehicle. Universal Underwriters Ins. Co. v. State Farm Mutual Auto Ins. Co., — M —, 531 P 2d 668.

53-109.1. Used motor vehicles—transfer to and from dealers. The provisions of 53-109(2) shall not apply in the event of the transfer of a motor vehicle to a duly licensed automobile dealer intending to resell such vehicle and who operates the same only for demonstration purposes. In such cases, the dealer shall not be required to make application for a new certificate of ownership or for registration during the period of his ownership of said vehicle, but upon his transfer of ownership thereof to a person other than a licensed motor vehicle dealer, the following acts shall be required of the dealer on or before the times herein set forth:

(1) Prior to his delivery of the vehicle to the purchaser, the dealer shall issue and affix to the rear window of said vehicle a sticker in form to be prescribed by the registrar and containing the name and address of the purchaser, date of sale, name and address of the dealer, and a

description of the vehicle, including its serial number. There shall be imprinted upon said sticker in bold letters the following statement: "IT IS UNLAWFUL TO PLACE LICENSE PLATES UPON THIS VEHICLE UNTIL REGISTERED AT THE OFFICE OF THE COUNTY TREASURER." One copy of said sticker shall be delivered by the dealer to the county treasurer in the manner prescribed in subsection (2) hereof, and a copy shall be retained by the dealer for his file.

(2) Within 4 working days following the date of delivery of said vehicle, the dealer shall forward to the county treasurer of the county where the purchaser resides the certificate of ownership and certificate of registration (if the same are then in his possession), with an application for registration executed by the new owner in accordance with the provisions of 53-107, and a copy of the sticker affixed to said vehicle by the dealer, and the registrar, upon receipt of said documents from the county treasurer, together with the conditional sales contract or other lien, if any, shall issue a new certificate of ownership and certificate of registration together with a statement of any conditional sales contract, mortgage, or other lien as provided in said 53-107. Transmission of said documents by the dealer to the county treasurer may be accomplished either by personal delivery or by first class mail, in which event they shall be deemed to have been delivered at the time of mailing.

(3) If the dealer is unable to forward the certificate of ownership and/or certificate of registration within the time set forth in subsection (2) hereof, because the same are lost, are in the possession of third parties, or are in process of reissuance in this state or elsewhere, he shall comply in all other respects with the provisions of subdivision (2) and shall forward the missing document or documents to the county treasurer, either personally or by first class mail, within 3 days after their receipt.

Upon compliance by the dealer with the requirements set forth in this section, title to said motor vehicle shall be deemed to have passed to the purchaser as of the date of the delivery of said vehicle to him by the dealer, and the dealer shall have no further liability or responsibility with respect to the processing of registration.

History: En. Sec. 3, Ch. 138, L. 1971; amd. Sec. 2, Ch. 399, L. 1977.

Title of Act

An act to provide for the issuance by licensed motor vehicle dealers of stickers to be affixed to the rear window of new and used vehicles purchased from such dealers, to remain thereon during the ten day grace period for making application for registration of such vehicle; providing a nonregistration penalty; requiring that in cases of sales of used motor vehicles to persons other than licensed dealers, the dealer forward to the county treasurer, either personally or by first class mail, within three days following delivery of the vehicle, the certificate of ownership and certificate of registration with an application for registration executed by the new owner, and a copy of the sticker

affixed to said vehicle by the dealer; providing that in such cases and upon compliance by the dealer with such requirements, title to said motor vehicle shall be deemed to have passed to the purchaser as of the date of delivery of said vehicle; amending sections 53-108, 53-109, 53-146, and 53-147, Revised Codes of Montana, 1947; and repealing all acts and parts of acts in conflict herewith.

Amendments

The 1977 amendment changed the reference to section 53-109 near the beginning of the section to conform with the amendment of that section; substituted "Within four working days" at the beginning of subsection (2) for "Within three (3) days"; and made minor changes in phraseology, punctuation and style.

DECISIONS UNDER FORMER LAW

Attachment of Vehicle

Where plaintiff assignee of vehicle had not recorded the title in her name even though she had possession of the vehicle and endorsed documents of title, she was a stranger to the title under former subsection (d) of section 53-109 and had no standing to complain of a wrongful attachment for the debt of the supposed owner, her former husband. *Ott v. Fidelity Finance Co.*, 158 M 91, 488 P 2d 1148.

Contract for Purchase

Where registrar never issued certificate of registration to purchaser of a vehicle, so that under former subsection (d) of section 53-109 title did not pass to the purchaser, a non-negotiable promissory note given by the purchaser was without consideration, therefore voidable against an assignee of the note. *Sonnek v. Universal C.I.T. Credit Corp.*, 140 M 503, 374 P 2d 105, 108.

Insurance Coverage

Where buyer of a vehicle had not executed an application for registration in his name and neither party had filed any documents relating to the transfer with the registrar of motor vehicles, title had not passed to the buyer even though the parties had agreed on the price and buyer had taken possession, so that liability from an accident while buyer was driving was covered by dealer-seller's insurance rather than by the owned-replacement clause of buyer's insurance. *Safeco Ins. Co. of America v. Northwestern Mutual Ins. Co.*, 142 M 155, 382 P 2d 174, distinguished in 368 F 2d 405, 409 and in 329 F Supp 172, 175.

Where dealer-seller retained possession of the certificate of registration of a vehicle pending payment of the final installments of the purchase price, the title remained in the seller under the provisions of former subsection (d) of section 53-109, even though the vehicle had been delivered to buyer, and liability for an accident involving buyer's son's driving of the car was covered by the seller's insurance rather than by the 30-day automatic coverage for a new car under buyer's policy or by uninsured motorist coverage of injured parties. *Ostermiller v. Parker*, 152 M 337, 451 P 2d 515, explained in 323 F Supp 1164, 1173 and distinguished in 329 F Supp 172, 175.

Where none of the parties had taken any steps to have a new certificate of title issued to buyer of a vehicle, title remained in the dealer-seller under former subsection (d) of section 53-109, even though the vehicle and the executed documents of title had been delivered to the buyer by a third party non-dealer who

had purchased from the dealer, and liability for an accident arising out of the buyer's brother's operation of the vehicle was covered by the insurance of the dealer and the third party, rather than by the insurance of the buyer. *Irion v. Glen Falls Ins. Co.*, 154 M 156, 461 P 2d 199, explained in 323 F Supp 1164, 1174 and distinguished in 329 F Supp 172, 175.

Where purchaser of vehicle had exercised complete dominion over a vehicle for over three years, had taken possession of the seller's certificate of registration, had purchased license plates for it in his own name for two years, had purchased insurance for it, and had repaired it, he was the owner of the vehicle for purposes of the non-owned clause of his insurance policy, despite the fact that there had been no compliance with section 53-109 and no certificate of registration had been issued to him as required by former subsection (d) of section 53-109. *National Farmers Union Property & Casualty Co. v. Colbrese*, 368 F 2d 405, reversing 227 F Supp 978, cert. den. 386 US 991, 87 S Ct 1306, questioned in 154 M 156, 461 P 2d 199, 205.

Where certificate of title had not been endorsed by dealer-seller and there had been no application for a certificate in buyer's name, the failure to meet the requirements of section 53-109 invalidated the sale under the terms of former subsection (d) of section 53-109, the seller was still legally in possession, and buyer was not excluded by an exclusion of persons to whom possession had been delivered pursuant to a contract of sale, despite the fact that the vehicle and the documents of title had been physically delivered to buyer, so dealer's insurance covered liability for an accident involving buyer's brother's operation of the vehicle. *Glen Falls Ins. Co. v. Irion*, 323 F Supp 1164.

Where buyer took possession of vehicle and executed application for certificate of title on Saturday and dealer-seller endorsed the old certificate and delivered the documents to the county treasurer on Monday, the next day of business for that office, the requirements of section 53-109 were met and title passed as of Saturday, despite former subsection (d) of section 53-109 and despite death of buyer later on Saturday, so that seller's insurance policy did not cover liability for accident arising out of operation of vehicle with buyer's consent occurring on Saturday after delivery of vehicle to buyer. *Phoenix Ins. Co. v. Newell*, 329 F Supp 172, distinguished in 343 F Supp 576, 581.

Where, at the time of an accident arising out of operation of the vehicle by buyer's employee, the vehicle had been

delivered to buyer but buyer had not executed an application for certificate of title, the title had not passed under former subsection (d) of section 53-109, and the subsequent registration of the transfer could not cause the transfer to relate back to the time the vehicle was delivered

to the buyer but only to the time that buyer executed an application for certificate of title; therefore, liability arising out of the accident was covered by seller's insurance. *American States Ins. Co. v. Angstman Motors, Inc.*, 343 F Supp 576.

53-109.2. Applicability of sticker provisions to new car purchases. The provisions of section 3 [53-109.1], subsection (1), pertaining to the issuance of a sticker by the dealer, placement thereof upon the rear windshield of the vehicle prior to delivery, and transmission of a copy of said sticker to the county treasurer, either personally or by first class mail within ten (10) days following delivery of said vehicle, shall be applicable to sales of new motor vehicles as well as to sales of used motor vehicles.

History: En. Sec. 4, Ch. 138, L. 1971.

53-109.3. Temporary windshield sticker. Any purchaser of a motor vehicle who is unable to obtain license plates from the county treasurer at the time he makes application for registration or reregistration of said vehicle, because the certificate of ownership is lost, in the possession of third parties, or in the process of reissuance in this state or elsewhere, may, upon making affidavit to that effect upon a form prescribed by the registrar and upon the payment of a fee of two dollars (\$2) to be collected by the county treasurer and remitted to the registrar, obtain from the county treasurer of the county in which said vehicle is subject to tax, a temporary windshield sticker of such size, color and design as the registrar may prescribe, to be validated by the county treasurer for a period of sixty (60) days from the date of issuance, and such purchaser, upon displaying such sticker on the lower right-hand corner of the windshield of such motor vehicle shall be entitled to operate such vehicle during the period for which such windshield sticker has been validated without displaying the registration certificate or number plates or plate for the current year. Provided, however, the county treasurer shall not sell, and no person shall purchase, more than one (1) sixty (60) day temporary windshield sticker for any vehicle, the ownership of which has not changed since the issuance of the previous sixty (60) day windshield sticker.

History: En. Sec. 5, Ch. 138, L. 1971.

53-109.4. Grace period—penalty. Any purchaser of a new or used motor vehicle from a duly licensed motor vehicle dealer shall have the grace period of 20 calendar days from the date of purchase to make application for registration and to obtain registration plates, and it shall not be a violation of this chapter or any other law for such purchaser to operate such vehicle upon the streets and highways of this state without a certificate of registration and registration plates during the 20-day period; provided that at all times during said period the sticker issued by the dealer at the time of purchase shall remain affixed to said vehicle as provided in section 3 [53-109.1]. Failure to make such application within the

time provided herein subjects the purchaser to a penalty of \$10. The penalty is to be collected by the county treasurer at the time of registration and is in addition to the fees otherwise provided by law.

History: En. Sec. 8, Ch. 138, L. 1971; amd. Sec. 3, Ch. 399, L. 1977.

Amendments

The 1977 amendment extended the grace period from 10 days to 20 calendar days; deleted a provision for an additional penalty of \$1.00 for each additional day

vehicle remains unregistered, not to exceed \$25; and made minor changes in phraseology, punctuation and style.

Repealing Clause

Section 9 of Ch. 138, Laws 1971 repealed all acts and parts of acts in conflict therewith.

53-110. (1758.3) Filing of liens, rights, procedure, fees. (a). * * *
[Same as parent volume.]

(b) Satisfactions or statements of release filed with the registrar of motor vehicles under this act shall be retained by him for a period of eight (8) years after receipt, after which they may be destroyed. Chattel mortgages, conditional sales contracts, leases, or other liens filed with the registrar, and all renewals and assignments thereof, shall be retained by him for a period of eight (8) years after the maturity date stated in such mortgage, conditional sales contract, lease, or other lien, or renewal, or if no maturity date is therein stated, for a period of thirteen (13) years after receipt, after which they may be destroyed.

(c) From and after the filing of any mortgage, conditional sales contract, lease, or other lien, or copy thereof on any motor vehicle, as herein provided, then and in that event such mortgage, conditional sales contract, lease or other lien shall be constructive notice of the said mortgage, conditional sales contract, lease or other lien and its contents to subsequent purchasers and encumbrancers.

(d) Upon default under a chattel mortgage or conditional sales contract covering a motor vehicle the mortgagee or vendor has the same remedies as in the case of other personal property, except that the remedy of seizure prescribed by section 52-312 shall be available upon delivery to the sheriff of the original instrument or a copy certified by the registrar of motor vehicles and such undertaking as may be required by the sheriff. In case of attachment of motor vehicles all the provisions of section 93-4338 shall be applicable except that deposits must be made with the registrar of motor vehicles.

(e) In the event any conditional sales vendor or assignee or chattel mortgagee or assignee fails to file a satisfaction of a chattel mortgage, assignment or conditional sales contract within fifteen days after receiving final payment on such mortgage, assignment, or conditional sales contract he shall be required to pay the registrar of motor vehicles the sum of one dollar (\$1.00) for each and every day thereafter that he fails to file such satisfaction.

(f) and (g). * * * [Same as parent volume.]

(h) A fee of two dollars (\$2.00) shall be paid to the registrar of motor vehicles upon and for filing any lien or lien instrument against any motor vehicle, and said fee of two dollars (\$2.00) shall further include and cover the cost of filing a satisfaction or release of the lien or lien

instrument, and, also, the cost of endorsing such satisfaction or release on the face of the certificate of ownership or on the records of the registrar, or both. A fee of two dollars (\$2.00) shall be paid the registrar of motor vehicles for issuing a certified copy of a chattel mortgage, conditional sales contract or other lien, or instrument of encumbrance on file in the office of the registrar, or for filing any assignment of any instrument on file with the registrar. All fees provided for in this section shall be deposited by the registrar in the earmarked revenue fund.

History: En. Subd. 4, Sec. 2, Ch. 159, L. 1933; amd. Sec. 7, Ch. 72, L. 1937; amd. Sec. 3, Ch. 148, L. 1943; amd. Sec. 3, Ch. 63, L. 1945; amd. Sec. 11-143, Ch. 264, L. 1963; amd. Sec. 26, Ch. 121, L. 1965.

Amendments

The 1963 amendment completely re-wrote subsection (b), for previous text of which see parent volume; inserted "or conditional sales contract" near the beginning of subsection (d); substituted "mortgagee or vendor has the same remedies as in the case of other personal property, except that the remedy of seizure prescribed by section 52-312 shall be available" in subsection (d) for "mortgagee may foreclose his mortgage as in the case of other personal property, and upon default under a conditional sales contract covering a motor vehicle the vendor shall have the remedies prescribed by section 74-207"; substituted the reference to section 93-4338 in the latter part of subsection (d) for a reference to section 52-309; deleted the words "instead of the county treasurer" from the end of subsection (d); and made minor changes in phraseology and punctuation in subsection (d).

The 1965 amendment deleted from the end of subsection (e) a sentence reading "All moneys paid to the registrar of motor vehicles under this section shall revert to the automobile theft fund"; increased the fees in subsection (h) for filing liens and releases from \$1.00 to \$2.00, for certified copies from 50¢ to \$2.00, and for filing assignments from 50¢ to \$2.00; and added the last sentence to subsection (h).

Notice of Agister's Lien

Failure of automobile repairman to file copy of asserted agister's lien with registrar of motor vehicles as required by subsection (a) rendered that lien invalid as against bank holding recorded security interest in vehicle repaired and those seizing vehicle in its behalf. *Parker v. West*, — M —, 505 P 2d 94.

Notice of Prior Interest

Where auto repairman failed to ascertain true ownership of auto before making repairs, the filing of conditional sales contract with the registrar of motor vehicles by assignee prior to repairman's lien established a dominant interest under subsection (c) of this section. *Williamson v. Skerritt*, 141 M 422, 378 P 2d 215.

53-112. (1758.4) Fee for original certificate of ownership and transfer of title. A charge of three dollars (\$3.00) shall be made for issuance of an original certificate of ownership of title and for a transfer of registration which shall be collected by the county treasurer. The fees shall be distributed as follows:

(a) Two dollars (\$2.00) of each fee shall be remitted to the registrar of motor vehicles by the county treasurer with each application for original certificate of ownership or transfer of registration.

(b) Prior to March 1, 1966 and each March thereafter, the county commissioners of each county shall divide the fees retained by the county to:

(i) the city road fund of each city and town within the county based on the number of motor vehicles registered inside the corporate limits of each city or town, and

(ii) the county road fund based on the number of motor vehicles registered outside the corporate limits of cities and towns.

History: En. Subd. 5, Sec. 2, Ch. 159, L. 1933; amd. Sec. 8, Ch. 72, L. 1937; amd. Sec. 27, Ch. 121, L. 1965; amd. Sec. 2, Ch. 41, L. 1975.

Amendments

The 1965 amendment increased the fee specified in the first sentence from \$1.00 to \$2.00; inserted "and for a transfer of registration" in the first sentence; deleted "for the registrar of motor vehicles the first time any vehicle is registered by any owner" from the end of the first sentence; and substituted the second sentence and paragraphs (a) and (b), including subparagraphs (i) and (ii), for sentences reading, "Said charge of one dollar (\$1.00) shall be remitted to the

registrar of motor vehicles by the county treasurer with each application for registration. Upon a transfer of registration by the owner, there shall be forwarded to the registrar of motor vehicles, the certificate of ownership or title and registration card, properly filled out and executed, together with a transfer fee of one dollar (\$1.00)."

The 1975 amendment increased the fee specified in the first sentence from \$2.00 to \$3.00; increased the fee specified in subdivision (a) from \$1.00 to \$2.00; and made minor changes in punctuation.

Cross-References

Junk vehicle disposal fees payable on title certificates and transfers, sec. 69-6807.

53-113. (1758.5) Lost certificates. In the event any certificate of registration or ownership shall be lost, mutilated or become illegible, the person to whom the same shall have been issued shall immediately make application for and may obtain a duplicate thereof, upon furnishing satisfactory information to the registrar of such facts and upon payment of a fee of two dollars (\$2.00).

History: En. Subd. 6, Sec. 2, Ch. 159, L. 1933; amd. Sec. 1, Ch. 96, L. 1953; amd. Sec. 28, Ch. 121, L. 1965.

Amendments

The 1965 amendment increased the fee specified at the end of the section from \$1.00 to \$2.00.

53-114. (1759) Application for registration of motor vehicles and payment of license fees—requirement of statement or origin—assessment of motor vehicles in the stock of licensed motor vehicle dealers as merchandise. (1) Every owner of a motor vehicle operated or driven upon the public highways of this state shall, for each motor vehicle owned, except as herein otherwise expressly provided, file or cause to be filed in the office of the county treasurer where the motor vehicle is owned or taxable an application for registration or reregistration upon a blank form to be prepared and furnished by the registrar of motor vehicles. The application shall contain:

(a) name and address of owner, giving county, school district, and town or city within whose corporate limits the motor vehicle is taxable;

(b) name and address of conditional sales vendor, mortgagee, or holder of other lien against the motor vehicle, with statement of amount owing under such contract or lien;

(c) description of motor vehicle, including make, year model, engine or serial number, manufacturer's model or letter, gross weight, type of body, and if truck, the rated capacity;

(d) in case of reregistration, the license number for the preceding year; and

(e) such other information as the registrar of motor vehicles may require.

(2) A person who files an application for registration or reregistration of a motor vehicle, except of a mobile home as defined in 84-101, shall

before filing such application with the county treasurer submit the same to the county assessor of the county. The county assessor shall enter on the application in a space to be provided for that purpose the market value and taxable value of the vehicle for the year for which the application for registration is made.

(3) A person who files an application for registration or reregistration of a motor vehicle, except of a mobile home as defined in 84-101, shall upon the filing of the application

(a) pay to the county treasurer the registration fee, as provided in 53-122 and 53-115, and

(b) pay the personal property taxes assessed or the new motor vehicle sales tax against the vehicle for the current year of registration, unless the same shall have been theretofore paid for the year, before the application for registration or reregistration may be accepted by the county treasurer. The county treasurer may make full and complete investigation of the tax status of the vehicle. Any applicant for registration or registration must submit proof from the tax records of the proper county at the request of the county treasurer.

(4) The amount of taxes on the motor vehicle, except a mobile home as defined in 84-101, is computed and determined by the county treasurer on the basis of the levy of the year preceding the current year of application for registration or reregistration. The determination is entered on the application form in a space provided therefor.

(5) Motor vehicles, except mobile homes as defined in 84-101, are assessed for taxes on January 1 in each year irrespective of the time fixed by law for the assessment of other classes of personal property and irrespective of whether the levy and tax may be a lien upon real property within the state of Montana. In no event may any motor vehicle be subject to assessment, levy, and taxation more than once in each year.

(6) (a) The applicant for original registration of any wholly new and unused motor vehicle or new motor vehicle furnished without charge by the dealer to the school district for use as a traffic education motor vehicle by a school district operating a state-approved traffic education program within the state of Montana, whether or not previously licensed or titled to the school district, except a mobile home as defined in 84-101, acquired by original contract after January 1 of any year shall be required, whenever such vehicle has not been otherwise assessed, to pay the motor vehicle sales tax provided by 32-3315 irrespective of whether the vehicle was in the state of Montana on January 1 of the year.

(b) No such motor vehicle may be registered or licensed under the provisions of this subsection unless the application for registration is accompanied by a statement of origin to be furnished by the dealer selling the vehicle, showing that the vehicle has not previously been registered or owned, except as otherwise provided herein, by any person, firm, corporation, or association that is not a new motor vehicle dealer holding a franchise or distribution agreement from a new car manufacturer, distributor, or importer.

(7) Upon accepting application for registration or reregistration of any

motor vehicle which is subject to taxation in this state on January 1 in any year and upon payment of taxes, the county treasurer shall stamp on the application: "taxes on this vehicle due January 1 of current year paid by applicant, prior applicant, or owner, and this vehicle is eligible for registration". Upon accepting application for registration of any motor vehicle which was not subject to taxation in this state on January 1 in any year, the county treasurer shall indicate the fact by proper entry on the application.

(8) The registrar of motor vehicles may make proper entry of the payment of taxes in accord with the facts on any certificate of title to a motor vehicle

(9) Motor vehicles subject to anniversary date registration as provided in 53-154 through 53-162 are exempt from the provisions of subsections (5) and (7) of this section.

History: En. Sec. 5, Ch. 75, L. 1917; amd. Sec. 1, Ch. 207, L. 1919; re-en. Sec. 1759, R. C. M. 1921; amd. by repeal Subd. 4, Sec. 22, Ch. 113, L. 1925; amd. Sec. 2, Ch. 181, L. 1929; amd. Sec. 1, Ch. 158, L. 1931; amd. Sec. 1, Ch. 158, L. 1933; amd. Sec. 1, Ch. 72, L. 1937; amd. Sec. 1, Ch. 195, L. 1953; amd. Sec. 1, Ch. 256, L. 1955; amd. Sec. 1, Ch. 223, L. 1957; amd. Sec. 1, Ch. 245, L. 1963; amd. Sec. 1, Ch. 290, L. 1967; amd. Sec. 9, Ch. 296, L. 1967; amd. Sec. 3, Ch. 214, L. 1971; amd. Sec. 12, Ch. 74, L. 1975; amd. Sec. 1, Ch. 55, L. 1977; amd. Sec. 1, Ch. 521, L. 1977; amd. Sec. 43, Ch. 566, L. 1977.

Compiler's Notes

This section was amended three times in 1977 by Chs. 55, 521, and 566. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by all amendments.

Amendments

The 1963 amendment deleted the words "except as hereinafter provided" which followed "Motor vehicles" at the beginning of subsection (5); deleted from the end of subsection (5) a proviso reading, "and provided, further, that new motor vehicles, and used motor vehicles which have not previously been assessed and licensed during the current year, when held for sale in the stock of any duly licensed motor vehicle dealer or used motor vehicle dealer, are hereby declared to be merchandise and shall be assessed as of the first Monday in March in each year in the same manner as other stocks of merchandise"; and deleted from the end of the second paragraph of subsection (7) a clause reading, "and in case such motor vehicle shall have been assessed for taxation as a part of the stock of merchandise of a licensed dealer, the county treasurer shall indicate such fact by proper entry

on said application, and the applicant for registration shall not be required to pay the personal property tax on any motor vehicle so assessed as merchandise."

Chapter 290, Laws of 1967, inserted "or the new motor vehicle sales tax" after "taxes assessed" in the first sentence of subdivision (3).

Chapter 296, Laws of 1967, in subsection (2), added "Whoever files an application for registration or reregistration of a motor vehicle except of a mobile home as defined in section 84-101, R. C. M. 1947, shall" at the beginning of the subsection and deleted "the applicant shall" before "submit the same"; in subsection (3), substituted "Whoever files an application for registration or reregistration of a motor vehicle except of a mobile home as defined in section 84-101, R. C. M. 1947, shall" for "The applicant shall" before "upon the filing of" at the beginning of the subsection; in subsection (4), inserted "except a mobile home as defined in section 84-101, R. C. M. 1947" after "said motor vehicle"; in subsection (5), inserted "except mobile homes as defined in section 84-101, R. C. M. 1947" after "Mobile vehicles" near the beginning of the subsection; in subsection (6), inserted "except a mobile home as defined in section 84-101, R. C. M. 1947" after "unused motor vehicle" and substituted "section 32-3315, R. C. M. 1947" for "section 53-617" after "tax provided by."

The 1971 amendment deleted "executed in quintuplet" near the end of the preliminary paragraph of subsection (1); substituted "engine or serial number" for "engine and serial number" in subdivision (1)(c); and made minor changes in punctuation and style.

The 1975 amendment added subsection (9).

Chapter 55, Laws of 1977, inserted subdivision (6)(b); substituted "(5) and (7)" near the end of subsection (9) for

"(5), (6), and (7)"; and made a minor change in style.

Chapter 521, Laws of 1977, inserted "or new motor vehicle furnished without charge by the dealer to the school district for use as a traffic education motor vehicle by a school district operating a state-approved traffic education program within the state of Montana, whether or not previously licensed or titled to the school district" in the first sentence of subsection (6); and made minor changes in phraseology, punctuation and style.

Chapter 566, Laws of 1977, substituted "market value and taxable value" in the second sentence of subsection (2) for "full and true and the assessed valuation"; and made minor changes in phraseology, punctuation and style.

Separability Clause

Section 10 of Ch. 296, Laws 1967 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Cross-References

Registrar's position abolished and functions transferred, sec. 82A-1205 (1).

References

Safeco Ins. Co. of America v. Northwestern Mutual Ins. Co., 142 M 155, 382 P 2d 174.

DECISIONS UNDER FORMER LAW

Flathead Reservation Indians

This section is invalid as conflicting with federal law in so far as it requires the payment of a motor vehicle tax or other personal property taxes by members of the Confederated Salish and

Kootenai Tribes residing on the Flathead Reservation. *Moe v. Confederated Salish and Kootenai Tribes*, — US —, 48 L Ed 2d 96, 96 S Ct 1634, affirming 392 F Supp 1325.

53-115. (1759.1) Time for making application. Registration must be renewed annually and license fees paid annually. Except as provided in sections 53-154 through 53-162, all registrations expire on December 31 of the year in which they are issued and application for registration, or re-registration, must be filed with the county treasurer as aforesaid not later than February 15 of each year. Provided, however, that in the event of transfer of a motor vehicle during the registration year, such motor vehicle shall be reregistered and relicensed as provided by statute.

History: En. Subd. 2, Sec. 1, Ch. 158, L. 1933; amd. Sec. 1, Ch. 51, L. 1967; amd. Sec. 9, Ch. 127, L. 1969; amd. Sec. 13, Ch. 74, L. 1975.

date for registration or reregistration from February 1 to February 15.

The 1969 amendment added the proviso.

The 1975 amendment inserted "Except as provided in sections 53-154 through 53-162" at the beginning of the second sentence.

Amendments

The 1967 amendment changed the late

53-117. (1759.3) Disposition of taxes. The county treasurer shall credit all taxes on motor vehicles so collected to a motor vehicle suspense fund and, at some time between March 1 and March 10 of each year, and every sixty (60) days thereafter, the county treasurer shall distribute the same in relative proportions required by the levies for state, county, school district and municipal purposes in the same manner as other personal property taxes are distributed.

History: En. Subd. 4, Sec. 1, Ch. 158, L. 1933; amd. Sec. 4, Ch. 72, L. 1937; amd. Sec. 1, Ch. 154, L. 1943; amd. Sec. 1, Ch. 200, L. 1945; amd. Sec. 29, Ch. 121, L. 1965.

Amendments

The 1965 amendment deleted from the

end of the section sentences reading, "All motor vehicle license fees collected by the county treasurer shall be credited to the motor vehicle license fund hereby established. The cost of making and delivering license plates and identification marks, certificates, and all other expense of operating the motor vehicle department of the

state of Montana, shall be paid out of the motor vehicle recording fund (sometimes called the motor vehicle administrative fund); provided, however that each county shall receive its pro rata share of any license fees, except dealer license fees, paid to the registrar of motor vehicles.

The remainder in said county motor vehicle license fund shall be transferred by the county treasurer at the end of each month to the road fund of said county and shall be used by the county for the purpose set forth in section 53-122."

53-118. (1759.4) Application for dealer's license. (1) Every person, firm, corporation, or association who, for commission or profit, engages in the business of buying, selling, exchanging or acting as a broker of new motor vehicles, used motor vehicles, trailers, (except trailers having an unladen weight of less than five hundred (500) pounds), semi-trailers or special mobile equipment as defined in section 53-642 and qualifies under subparagraph (f) of this section, shall cause to be filed, by mail or otherwise, in the office of the registrar of motor vehicles, a verified application for licensing as a dealer on a blank to be furnished by the registrar of motor vehicles for that purpose, and containing the information therein required. The application and all of the information therein contained shall be verified by the Montana highway patrol. Each application must be accompanied by the license fee hereinafter named. Dealer's license must be renewed and paid for annually, and an application for relicensing must be filed not later than January first of each year. To qualify for licensing and the issuance and use of "D," "UD," "DTR," or "MCD" plates, as hereinafter provided, the applicant must furnish the following information and qualify under the following provisions:

(a) To qualify as a new motor vehicle dealer and for the use of "D" plates, the applicant must:

(i) state the name under which the business is to be conducted and the location of the premises (street address, city, county, and state) where records are kept, sales are made, and stock of motor vehicles is displayed;

(ii) state the name and address of all owners or persons having an interest in the business, provided that in the case of a corporation, the names and addresses of the president and secretary thereof are sufficient;

(iii) state the name and make of all motor vehicles handled and the name and address of the manufacturer, importer, or distributor with whom the applicant has a written new motor vehicle franchise or sales agreement;

(iv) execute a certificate to the effect that the applicant has a permanent building for the display and sale of new motor vehicles at the location of the premises where sales are conducted;

(v) execute a certificate to the effect that the applicant has a bona fide service department for the repair, service, and maintenance of motor vehicles; and

(vi) execute a certificate to the effect that the applicant is a bona fide dealer in new motor vehicles and that he is recognized by a manufacturer, importer, or distributor as a dealer in new motor vehicles.

(b) To qualify as a used motor vehicle dealer and for the use of "UD" plates, or as a trailer, semitrailer, or special mobile equipment dealer and

for the use of "DTR" plates, or as a motorcycle dealer and for the use of "MCD" plates, the applicant must, in addition to the matters set forth in subsections (i) and (ii) of subsection (1)(a) above, provide:

(i) a statement that the applicant has a building or lot and a sign readable at a minimum distance of 150 feet and indicating the firm name and headquarters as the principal place of business; and

(ii) a certificate to the effect that the applicant is a bona fide dealer in used motor vehicles, trailers, semitrailers, special mobile equipment, or motorcycles.

(c) To qualify for a used motor vehicle dealer license a person must submit an annual application for that license and comply with the provisions of this subsection in addition to fulfilling the requirements of subsection (1)(b) above. A new applicant for a used motor vehicle dealer license shall pay \$300 to the registrar of motor vehicles in addition to any other sums required by this section or other provisions of the law. An applicant for a renewal of a used motor vehicle dealer license shall certify under oath that he has sold more than five used motor vehicles during the preceding calendar year or pay an additional \$300 before he may be licensed.

(d) The provisions of subsection (1)(c) above, do not apply to an applicant who is licensed as a motor vehicle wrecking facility under the provisions of Title 69, chapter 68, R.C.M. 1947.

(2) The applicant for a dealer's license shall also file with his application a good and sufficient bond in the sum of five thousand dollars (\$5,000), and the bond shall be conditioned that the applicant shall conduct his business in accordance with the requirements of the law. All bonds shall run to the state of Montana and shall be approved by the registrar of motor vehicles and filed in his office and shall be renewed annually.

(3) Upon making such application, the applicant shall pay to the registrar of motor vehicles, in addition to the fees required of dealers under the provisions of section 53-122, a fee of five dollars (\$5). Upon receipt of the application, fee and bond, as provided above, the registrar of motor vehicles shall examine the application, and may, prior to issuing a license, make individual investigation of the truth of the statements contained in the application. If the registrar of motor vehicles is satisfied that the applicant qualifies for the issuance of a dealer's license under the provisions of this act, he may thereupon issue the same.

(4) Every dealer licensed under this section shall keep a book or record of the purchase, sale or exchange or receipt for the purpose of sale, of any used vehicle, a description of such vehicles, together with the name and address of the seller, of the purchaser, and of the alleged owner or other person from whom such vehicle was purchased or received, or to whom it was sold or delivered, as the case may be. Such description in the case of motor vehicles shall also include the engine number, if any, the maker's number, if any, chassis number, if any, and such other numbers or identification marks as may be thereon, and shall include a statement that a number has been obliterated, defaced or changed, if such is the fact. In

the case of a trailer, semitrailer or special mobile equipment, the record shall include the manufacturer's number and such other numbers or identification marks as may be thereon. He shall also have in his possession a duly assigned certificate of title from the owner of said motor vehicle in accordance with the provisions of another section of this act, from the time when the motor vehicle is delivered to him until it has been disposed of by him.

(5) Upon the licensing of a dealer as a new motor vehicle dealer, used motor vehicle dealer, or trailer, semitrailer, or special mobile equipment dealer, or a dealer of the motorcycle-type vehicle, the registrar of motor vehicles, shall assign to such dealer a distinctive serial license number as a dealer and after payment of fees furnish every qualified dealer in motor vehicles with not less than two (2) sets of number plates, and as many more as required according to need, which need shall be justified by the dealer with the initial application for license and each renewal. Assigned number plates shall be similar to number plates furnished to owners of motor vehicles but shall bear thereon, in addition to the serial number assigned such dealer, the letter "D" if the dealer is authorized to sell new motor vehicles (including trucks and truck-trailers); the letters "UD" if the dealer is authorized to sell used motor vehicles (including used trucks and used truck-trailers); the letters "DTR" if the dealer is authorized to sell trailers, semitrailers, or special mobile equipment (new or used); and the letters "MCD" if the dealer is authorized to sell vehicles of the motorcycle type (new or used). With the exception of a dealer authorized to sell new motor vehicles (including trucks and truck-trailers) and to use the "D" plate, no dealer authorized to transact business under the provisions of this section may offer for sale or trade any vehicle described in this section except such vehicles as are authorized by the plates assigned to him. If an applicant wishes to sell more than one type of vehicle, he shall make application for each separate authorization. No dealer plate assigned to a dealer may be used on any vehicle other than the type described in this section. A dealer authorized to sell new motor vehicles and assigned a "D" plate is authorized to sell both new and used motor vehicles (including trucks and truck-trailers), and "D" plates may be displayed on either new or used motor vehicles by a licensed dealer in new vehicles. The registrar of motor vehicles shall cause to be placed on each set of license plates issued to a dealer, a serial number assigned to each dealer and the actual number of license plates issued to each dealer. The number of the dealer shall follow the prefix of the county, and the number of plates issued the dealer shall follow the prefix of the county and the number of the dealer, the dealer's number to be separated from the county prefix by a dash, and the number of plates issued to a dealer to be separated from the dealer's number by a dash, as follows: Dealer number 4 in Lewis and Clark County would be numbered 5-4, and if the dealer were issued three sets of plates, they would be numbered consecutively as follows, 5-4-1, 5-4-2 and 5-4-3. Dealers properly licensed under this section are authorized to use and display, dealer's license plates on any motor vehicle held for bona fide sale or used in the conduct of the dealer's business in selling or demonstrating motor ve-

hicles. No dealer's license plate shall be used or displayed on vehicles normally used for hire, lease or rental or for purposes not incident to the business of a motor vehicle dealer. Each dealer is accountable for each plate issued and shall certify quarterly to the registrar of motor vehicles the disposition of each dealer plate assigned to the dealer, including the name, address, and occupation of the person primarily using each plate. If it shall appear to the satisfaction of the registrar of motor vehicles, from information furnished to him by the sheriff or any other law enforcement officer, that any such dealer has been improperly licensed, has used the dealer's license in a manner other than the one herein authorized or is not qualified as a dealer under the requirements of this section, the registrar of motor vehicles may revoke such dealer's license. No person, firm, corporation or association shall, for commission or profit, engage in the business of buying, selling, exchanging or acting as a broker of new motor vehicles, trailers or semitrailers unless duly licensed in compliance with this section (except trailers having an unladen weight of less than five hundred (500) pounds).

Any person violating the provisions of this section shall be guilty of a misdemeanor and subject to a fine of not less than two hundred fifty dollars (\$250) and not more than five hundred dollars (\$500). For the purposes hereof, every sale of a motor vehicle in violation of the provisions of this section shall be deemed a separate offense.

History: En. Subd. 5, Sec. 1, Ch. 158, L. 1933; amd. Sec. 2, Ch. 72, L. 1937; amd. Sec. 2, Ch. 245, L. 1955; amd. Sec. 3, Ch. 256, L. 1965; amd. Sec. 1, Ch. 354, L. 1969; amd. Sec. 2, Ch. 226, L. 1971; amd. Sec. 2, Ch. 244, L. 1971; amd. Sec. 1, Ch. 535, L. 1977.

Amendments

The 1965 amendment completely rewrote this section. For previous text, see parent volume.

The 1969 amendment, in the first paragraph, inserted "except trailers * * * pounds" after "trailers" in the first sentence, substituted "Montana highway patrol" for "sheriff of the county in which the business is to be conducted, as designated in subparagraph (b) below" in the second sentence and deleted a third sentence which read "A fee of two dollars (\$2) shall be paid to the sheriff for such verification"; in the second paragraph, substituted "five thousand dollars (\$5,000)" for "one thousand dollars (\$1,000.00)" and added "and shall be renewed annually"; in the sixth paragraph inserted the third and fourth sentences, deleted "exclusively" before "for hire" and inserted "lease or rental" in the sixth sentence, and added "except trailers * * * pounds" at the end of the eighth sentence; and, in the seventh paragraph changed the minimum fine from \$50 to \$250 and the maximum fine from \$300 to \$500.

Chapter 226, Laws of 1971, inserted references to motorcycle dealers and to

MCD plates near the end of the paragraph preceding the lettered subdivisions and in two places in the fifth paragraph following the lettered subdivisions, and made minor changes in style.

Chapter 244, Laws of 1971, inserted references to special mobile equipment dealers near the middle of the paragraph preceding the lettered subdivisions, in subdivision (f), in the fourth paragraph following the lettered subdivisions, and in two places in the fifth paragraph following the lettered subdivisions; and made minor changes in style, phraseology, and punctuation.

The 1977 amendment designated the first paragraph as subsection (1); substituted subdivisions (1)(a) through (1)(d) for subdivisions (a) through (g) of the first paragraph which contained requirements similar to those of subdivisions (1)(a)(i) through (1)(a)(iii) and (1)(a)(vi); designated the former second paragraph as subsection (2); deleted a former third paragraph which required a new motor vehicle dealer to have a permanent building for the conduct of business and a used motor vehicle dealer to have a permanent building or lot; designated the former fourth, fifth and sixth paragraphs as subsections (3) through (5); inserted "after payment of fees" in the first sentence of subsection (5); substituted "required according to need, which need shall be justified by the dealer with the initial application for license and each renewal" at the end of the first

sentence of subsection (5) for "the fee the dealer pays entitles the dealer to"; substituted the third through sixth sentences of subsection (5) for "Only new motor vehicle dealers' license plates bearing the letter 'D' shall be assigned if both new and used motor vehicles (including trucks and trailers) are sold, and only one license fee shall be required of any one dealer"; inserted "bona fide" in the ninth sentence of subsection (5); deleted "principally" before "in the conduct" in the ninth sentence of subsection (5); inserted the eleventh sentence in subsection (5); and made minor changes in phraseology and punctuation.

Cross-References

Registrar's position abolished and functions transferred, sec. 82A-1205 (1).

Dealer's Plates

Fact that dealer-transferor placed dealer's plates on automobile sold on Saturday in order that transferee might drive the vehicle over the weekend did not estop dealer and his insurer from denying ownership of vehicle at time of accident later that day. *Phoenix Ins. Co. v. Newell*, 329 F Supp 172, distinguished in 343 F Supp 576, 581.

53-118.1 to 53-118.5. Repealed.

Repeal

Sections 53-118.1 to 53-118.5 (Secs. 1 to 5, Ch. 36, L. 1965), relating to truck

demonstration permits, were repealed by Sec. 6, Ch. 209, Laws 1971.

53-118.6 to 53-118.10. [Transferred.]

Compiler's Notes

Sections 168 to 172, Ch. 316, Laws of

1974 renumbered these sections as secs. 32-3315.1 to 32-3315.5.

53-119. (1759.5) Must have license plates. Except as otherwise provided herein, no person shall operate a motor vehicle upon the public highways of this state without a license and unless such vehicle shall have been properly registered and shall have the proper number plates conspicuously displayed, one (1) on the front and one (1) on the rear of such vehicle, each securely fastened so as to prevent the same from swinging and unobstructed from plain view, except that trailers and semitrailers shall have but one (1) number plate conspicuously displayed on the rear. No person shall display on such vehicle at the same time any number assigned to it under any motor vehicle law, except as in this act otherwise provided. No person shall purchase or display on such vehicle any license plate bearing the number assigned to any county as provided in section 53-106, other than the county of his permanent residence at the time of application for registration. Provided, however, that the owner of any motor vehicle requiring a license plate on any motor vehicle used in the public transportation of persons or property may make application therefor in any county through which said motor vehicle passes in its regular scheduled route, and the license plate so issued bearing the number assigned to said county may be displayed on said motor vehicle in any other county of the state. It is further provided that it shall be unlawful to use license plates issued to one (1) vehicle on any other vehicle, trailers or semitrailers unless legally transferred as provided by statute, or repainting old license plates to resemble current license plates and any person violating these provisions shall be deemed guilty of a misdemeanor and shall be subject to the penalty as set out in section 53-132. Provided, however, that a junk vehicle, as defined in chapter 410, Montana Session Laws 1973, Title 69, chapter 68, R. C. M. 1947, being driven or

towed to an auto wrecking graveyard for disposal is exempt from the provisions of this section.

History: En. Subd. 6, Sec. 1, Ch. 158, L. 1933; amd. Sec. 1, Ch. 154, L. 1937; amd. Sec. 1, Ch. 73, L. 1941; amd. Sec. 10, Ch. 127, L. 1969; amd. Sec. 1, Ch. 18, L. 1974.

Amendments

The 1969 amendment substituted "registration" for "and issuance of said license plates" at the end of the third sentence,

deleted a statement of the validity of a current year's license plate used on the transfer of ownership of any used motor vehicle in the first proviso, and, in the last sentence, inserted "unless legally transferred as provided by statute" after "semi-trailers."

The 1974 amendment added the proviso at the end of the section.

53-119.1. Special permits for vehicles engaged in a single movement on the highways—fee—limitation—county treasurer to issue. A vehicle, subject to license under Title 53, may be moved unladen upon the highways of this state from a point within the state to a point of destination, the county treasurer at the point of the origin of the movement, shall issue a special permit therefor in lieu of fees required under sections 53-122 and 53-615, upon application presented to him in such form as shall be provided by the registrar of motor vehicles and upon exhibiting to said county treasurer proof of ownership and evidence that the personal property taxes on such vehicle, if any are due thereon, have been paid and upon payment therefor a fee of five dollars (\$5). Such permit shall not be in lieu of fees and permits required under sections 53-630 through 53-638.

Such permit shall be for the transit of the vehicle only, and the vehicle shall not at the time of such transit, be used for the transportation of any persons, except the driver, or property whatsoever for compensation or otherwise, and shall be for one (1) transit only between the points of origin and destination as set forth in the application and shown on the permit. Provided, however, that a junk vehicle as defined in chapter 410, Montana Session Laws 1973, Title 69, chapter 68, R. C. M. 1947, being driven or towed to an auto wrecking graveyard for disposal is exempt from the provisions of this section.

For the purpose of this section, a mobile home shall be considered unladen, when all items are removed, except the equipment originally installed by the manufacturer; and personal effects of owners.

Definition of a mobile home—house trailer for the purposes of this section. A trailer or semitrailer which is designed, constructed and equipped as a dwelling place, living abode or sleeping place (either permanently or temporarily) and is equipped for movement on streets and highways, and exceeds twenty-five (25) feet in length, exclusive of trailer hitch.

History: En. Sec. 1, Ch. 182, L. 1955; amd. Sec. 1, Ch. 126, L. 1965; amd. Sec. 2, Ch. 18, L. 1974.

Compiler's Notes

Sections 53-615, 53-630, 53-631, and 53-634 through 53-638, referred to in the first paragraph of this section, were repealed by Sec. 12-109, Ch. 197, Laws 1965.

Amendments

The 1965 amendment substituted the first paragraph for a sentence reading,

"When any vehicle subject to license is to be moved upon the public highways of this state, from one point to another, the county treasurer may issue a special permit therefor upon application presented to him in such form as shall be approved by the registrar of motor vehicles and upon payment therefor of a fee of five dollars (\$5.00)"; added "and shown on the permit" at the end of the second paragraph; and added the third and fourth paragraphs.

The 1974 amendment added the proviso at the end of the second paragraph.

Effective Date

Section 3 of Ch. 18, Laws 1974 provided the act should be in effect from and

after its passage and approval. Approved February 15, 1974.

53-120. (1759.6) Replacing number plates. In the event of loss, mutilation, or destruction of number plates, and/or validation devices, the owner of the registered motor vehicle may obtain from the registrar of motor vehicles, duplicates thereof upon filing sworn declaration showing such fact and payment of a fee of two dollars (\$2.00). In the event of loss, mutilation, or destruction of Pioneer plates, duplicates may be obtained in the same manner upon payment of a fee of five dollars (\$5.00).

History: En. Subd. 7, Sec. 1, Ch. 158, L. 1933; amd. Sec. 1, Ch. 47, L. 1955; amd. Sec. 1, Ch. 86, L. 1969; amd. Sec. 3, Ch. 226, L. 1971.

Amendments

The 1969 amendment added provision for obtaining duplicate Pioneer plates.

The 1971 amendment inserted the reference to validation devices in the first sentence.

53-122. (1760) Registration fees of motor vehicles—registration and transfer thereof—public owned vehicles exempt from license or registration fees—license or registration fees for trailers, house trailers, semitrailers and tractors providing for disposition of all fees. Registration or license fees shall be paid upon registration or reregistration of motor vehicles, trailers, house trailers, semitrailers and dealers in motor vehicles or trailers in accordance with this act, as follows:

All dealers in motor vehicles, a fee of thirty dollars (\$30.00): which shall entitle such dealer to two (2) sets of number plates, and five dollars (\$5.00) additional fee for each additional set of number plates up to six (6) sets, and two dollars (\$2.00) additional fee for each additional set of number plates, as may be applied for;

Dealers in motorcycles, trailers including house trailers, thirty dollars (\$30);

Motor vehicles, weighing twenty-eight hundred and fifty (2850) pounds, or under, other than motor trucks, five dollars (\$5.00);

Motor vehicles, weighing over twenty-eight hundred and fifty (2850) pounds, other than motor trucks ten dollars (\$10.00);

Electrically driven passenger vehicles, ten dollars (\$10.00);

All motorcycles, two dollars (\$2.00);

Tractors and/or trucks, ten dollars (\$10.00);

Buses shall be classed as motor trucks and licensed accordingly;

Trailers and semitrailers less than two thousand five hundred (2,500) pounds maximum gross loaded weight and house trailers of all weights, two dollars (\$2.00);

Trailers and semitrailers over two thousand five hundred (2,500) up to six thousand (6,000) pounds maximum gross loaded weight, except house trailers, five dollars (\$5.00);

Trailers and semitrailers over six thousand (6,000) pounds maximum gross loaded weight, ten dollars (\$10.00);

Trailers used exclusively in the transportation of logs in the forest or in the transportation of oil and gas well machinery, road machinery and bridge material exclusively, new and secondhand, and trailers used exclusively for the transportation of road machinery and bridge materials,

shall pay a fee of fifteen dollars (\$15.00) annually, regardless of size or capacity.

All rates to be twenty-five per cent (25%) higher for motor vehicles, trailers and semitrailers, when not equipped with pneumatic tires.

Bicycles with motor attachment, one dollar (\$1.00);

Tractors, as specified in this section, shall mean any motor vehicle, except passenger cars used for towing a trailer or semitrailer.

If any dealer, or motor vehicle, house trailer, trailer, or semitrailer is originally registered six (6) months after the time of registration as set by law, the registration or license fee for the remainder of such year shall be one-half ($\frac{1}{2}$) of the regular fee above given.

A dealer in motor vehicles or trailers who shall maintain more than one (1) place of business or who shall maintain any branch establishment or establishments, must register and pay a registration or license fee for each such place of business or establishment.

A registered dealer, who may sell or dispose of his entire business to any other person, may have his certificate of registration transferred to such purchaser upon filing with the registrar of motor vehicles a statement containing the name of the registered dealer, the number under which such dealer is registered, the name of the purchaser, and the location of the place of business so sold. Upon the filing of such statement, accompanied by a filing fee of two dollars (\$2.00), the registrar of motor vehicles shall note upon the registration record of such dealer the change of ownership. But no certificate of registration can be transferred unless the entire business of the dealer holding such certificate of registration be sold and disposed of, and no such certificate of registration can be transferred to any person other than the purchasers of such business.

The provisions of this act with respect to the payment of registration fees shall not apply to or be binding upon motor vehicles, trailers or semitrailers or tractors owned or controlled by the United States of America or any state, county or city, but in all other respects the provisions of this act shall be applicable to and binding upon motor vehicles, tractors, trailers, and semitrailers.

The provisions of this section relating to the payment of registration fees do not apply when number plates are transferred to a replacement vehicle under 53-106(4), 53-146, and 53-147.

All fees, other than license fees, unless otherwise specifically provided, shall hereafter be deposited in, and paid into, the earmarked revenue fund and shall be used to pay all salaries, operating expenses, and all other expenses of the department of the registrar of motor vehicles, including the manufacturer and delivery of license plates. Any reference in this code to the motor vehicle recording fund or the motor vehicle administration fund shall be taken to mean the motor vehicle recording account in the earmarked revenue fund.

History: En. Sec. 6, Ch. 75, L. 1917; amd. Sec. 2, Ch. 207, L. 1919; amd. Sec. 1, Ch. 199, L. 1921; re-en. Sec. 1760, R. C. M. 1921; amd. Sec. 1, Ch. 107, L. 1923; amd. Sec. 1, Ch. 88, L. 1927; amd. Sec. 1, Ch. 182, L. 1929; amd. Sec. 1, Ch. 103, L. 1933; amd. Sec. 1, Ch. 38, Ex. L. 1933; amd. Sec. 1, Ch. 138, L. 1937; amd. Sec. 1, Ch. 125, L. 1939; amd. Sec. 2, Ch. 154, L. 1943; amd. Sec. 2, Ch. 200, L. 1945; amd. Sec. 1, Ch. 201, L. 1945; amd. Sec. 1, Ch. 221, L. 1951; amd. Sec. 1, Ch. 215, L. 1953; amd. Sec. 1, Ch. 41, L. 1955; amd. Sec. 228, Ch. 147, L. 1963; amd. Sec. 1,

Ch. 178, L. 1963; amd. Sec. 30, Ch. 121, L. 1965; amd. Sec. 12-105, Ch. 197, L. 1965; amd. Sec. 4, Ch. 226, L. 1971; amd. Sec. 2, Ch. 243, L. 1977.

Amendments

Chapter 147, Laws 1963, substituted "the earmarked revenue fund and shall be used to pay" in what is now the last paragraph for "the motor vehicle recording fund of said registrar (sometimes called the motor vehicle administrative fund) out of which shall be paid"; added the second sentence to the same paragraph; deleted a former next to last paragraph reading, "There shall be immediately transferred from the motor vehicle fund of the registrar of motor vehicles to the said motor vehicle recording fund all moneys now in said motor vehicle fund which were collected by the registrar of motor vehicles as fees other than license fees"; and substituted "motor vehicle recording account" for "motor vehicle recording fund" in the paragraph later deleted by Ch. 121, Laws 1965.

Chapter 178, Laws 1963, amended former paragraph (c), for previous text of which see parent volume, to read, "In every county which does not have within its borders a city and area coming within the provisions of subsections (a) and (b) above, the net license fee derived from the registration of motor vehicles shall be by the registrar of motor vehicles transmitted to, and paid over to the county treasurer of each such county and shall be allocated and divided by the county treasurer as hereinafter provided. The motor vehicle license fund in each such county shall be divided between accounts designated as 'city road fund' and 'county road fund' in a prorata manner based upon the total number of miles of all public streets and highways situated within the limits of incorporated cities and towns within each county as compared with the total number of miles of public streets and highways situated within the county, but outside the corporate limits of any incorporated cities and towns"; inserted immediately after former paragraph (c) two new paragraphs reading, "The license fees held in the city road fund, as hereinabove provided shall be at the end of each thirty (30) day period beginning March 1, 1964, be paid by the county treasurer to the treasurer of each incorporated city or town within the county in a pro rata manner based upon the number of miles of all public streets and highways situated within such city or town as compared to the total number of miles of all public streets and highways within the limits of all incorporated cities and towns within the county. The city or town treasurer shall hold said moneys in

a separate fund designated as the 'city road fund' which shall be used by the city or town council only for the construction and repair of streets and highways within the corporate limits of such incorporated city or town" and "The net license fees derived from the registration of vehicles shall be used by said county for the construction, repair and maintenance of all public highways, except state and federal highways, within the boundaries of said county"; and added a final paragraph reading, "The board of county commissioners of each county which does not have within its borders a city and area coming within the provisions of subsections (a) and (b) above shall prior to March 1 of each year, beginning with the year 1964, determine the number of miles of public streets and highways situated in each incorporated city and town in the county, and the number of miles of public streets and highways within the county, but outside the corporate limits of the incorporated cities and towns, in order that the motor vehicle license and registration fees can be divided between the 'county road fund' and each 'city road fund' in the pro rata manner as provided in this act. The board of county commissioners shall at the same time also compute the percentage of said motor vehicle license and registration fees to be paid by the county treasurer to the treasurer of each incorporated city and town and also the percentage to be deposited in the county road fund."

Chapter 121, Laws 1965, adopted both 1963 amendments; increased the fee for change of ownership by registered dealer from \$1.00 to \$2.00; substituted "unless otherwise specifically provided" for "mentioned and described in sections 53-110 and 53-112, and in section 53-135" near the beginning of what is now the final paragraph; and deleted a next to last paragraph reading, "Whenever, in the judgment of the state board of examiners, there shall be in said motor vehicle recording account more moneys than are reasonably required or needed to pay all salaries, operating expenses, and all other expenses of the department of the registrar of motor vehicles, such board shall distribute such unneeded surplus or excess to the fifty-six (56) counties of the state in a pro rata manner based upon the total number of motor vehicles registered in each county."

Chapter 197, Laws 1965, effective December 31, 1966, deleted several paragraphs relating to the county motor vehicle license fund, for text of which see pages 538 and 539 in parent volume and above note relating to Chapter 178, Laws 1963; and deleted the three paragraphs inserted and added by Chapter 178, Laws 1963.

The 1971 amendment deleted "other than motorcycles" following "dealers in motor vehicles" at the beginning of the second paragraph; deleted from the end of the second paragraph a proviso reading "provided, that each dealer be required to furnish the registrar of motor vehicles a statement showing the makes of motor vehicles handled by him, and the total number of each make sold by him during the preceding year, and that he not be issued a license unless he so conforms"; increased the fee for dealers in motor-

cycles and trailers from \$15.00 to \$30.00; and made minor changes in phraseology.

The 1977 amendment added the next to last paragraph.

Cross-References

Property tax stickers required on house trailers, secs. 84-6601 to 84-6605.

References

Safeco Ins. Co. of America v. Northwestern Mutual Ins. Co., 142 M 155, 382 P 2d 174.

53-122.1. General fund reimbursement. Any moneys appropriated from the general fund for the operation of the registrar of motor vehicles or for the manufacture of number plates shall be reimbursed to the general fund from the motor vehicle account, earmarked revenue fund, if there are moneys in the account above the amount required for the normal operation of the registrar of motor vehicles.

History: En. 53-122.1 by Sec. 3, Ch. 41, L. 1975.

Title of Act

An act increasing from two dollars to three dollars the amount charged for the issuance of an original certificate of ownership of title and for a transfer of registration; providing that the amount remitted to the registrar of motor vehicles

by the county treasurer be increased from one dollar to two dollars; providing an additional fee for registration of fifty cents (\$.50) per year; providing that moneys appropriated from the general fund for registration purposes shall be reimbursed from the motor vehicle account; and amending sections 53-106 and 53-112, R. C. M. 1947.

53-129. (1760.7) Foreign vehicles used in gainful occupation—reciprocity board may make reciprocal agreements to exempt. Before any foreign licensed motor vehicle shall be operated on the highways of this state for hire, compensation or profit, or before the owner and/or user thereof uses the vehicle if such owner and/or user is engaged in gainful occupation or business enterprise, in the state of Montana, including highway work, the owner of such vehicle shall make application to a county treasurer for registration, upon an application form furnished by the registrar of motor vehicles. Upon satisfactory evidence of ownership submitted to such county treasurer, and the payment of property taxes as is required by sections 84-6008 or 84-406, the treasurer shall accept the application for registration and shall collect the regular license fee required for the vehicle. The treasurer shall thereupon issue to the applicant a copy of the application entitled "Owner's Certificate of Registration Receipt" and forward a duplicate copy of certificate of registration to the registrar of motor vehicles. The treasurer shall at the same time issue to the applicant the proper license plates or other identification markers, which shall at all times be displayed upon such vehicle, when operated or driven upon roads and highways of this state, during the period of the life of such license. The registration receipt shall not constitute evidence of ownership, but shall only be used for registration purposes. No Montana certificate of title shall be issued for this type of registration. This paragraph shall not be applicable to any vehicle cov-

ered by a valid and existing reciprocal agreement or declaration entered into under the provisions of the laws of Montana.

History: En. Sec. 7, Ch. 121, L. 1929; amd. Sec. 7, Ch. 126, L. 1933; amd. Sec. 1, Ch. 93, L. 1939; amd. Sec. 1, Ch. 296, L. 1947; amd. Sec. 3, Ch. 195, L. 1953; amd. Sec. 1, Ch. 143, L. 1955; amd. Sec. 26, Ch. 206, L. 1963; amd. Sec. 2, Ch. 290, L. 1967.

Amendments

The 1963 amendment deleted former subsections (2) and (3), for text of which see parent volume; and substituted "under the provisions of this act" for "as hereinafter set forth" after "entered into under" at the end of this section.

The 1967 amendment inserted "and/or user" after "owner" and substituted "if such owner and/or user is" for "while" after "uses the vehicle" in the first sentence; inserted "and the payment of property taxes as is required by sections 84-6008 or 84-406" after "county treasurer" in the second sentence; deleted "which is a part of an interstate fleet registered and licensed under the provisions of section 53-114, nor to any vehicle" before "covered by" and substituted "the laws of Montana" for "this act" after "the provisions of" in the last sentence.

53-133. (1763) Definitions. The words and phrases used in this act shall be construed as follows, unless the context may otherwise require:

a to f. * * * [Same as parent volume.]

g. The term "dealer" shall mean and include any person, firm, association, or corporation engaged in whole or in part in the business of buying, selling, exchanging, or acting as a broker of either new or used motor vehicles, or both, and who is qualified for issuance of a dealer's license under section 53-118, and no person, firm, association or corporation shall be issued a dealer's license by the registrar of motor vehicles unless they qualify as a dealer defined herein. The term "dealer" does not include the following: (1) Receivers, trustees, administrators, executors, guardians or other persons appointed by or acting under a judgment or order of any court of competent jurisdiction; or (2) employees of such persons when engaged in the specific performance of their duties as such employees; or (3) public officers while performing or in the operation of their duties. A dealer dealing in used cars only shall deliver to the buyer on completion of sale a transferable title, and shall purchase a Montana store license.

h to j. * * * [Same as parent volume.]

k. The term "manufacturer" shall include any person, firm, corporation or association engaged in the manufacture of any motor vehicles, trailers, or semitrailers as a regular business. Dealer shall deliver, under oath, a notarized certificate with any used motor vehicle, stating the full name and last known address of the previous owner of said motor vehicle, and state where the motor vehicle was last registered.

History: En. Sec. 12, Ch. 75, L. 1917; amd. Sec. 3, Ch. 207, L. 1919; re-en. Sec. 1763, R. C. M. 1921; amd. Sec. 4, Ch. 88, L. 1943; amd. Sec. 1, Ch. 139, L. 1945; amd. Sec. 1, Ch. 199, L. 1947; amd. Sec. 4, Ch. 256, L. 1965.

Amendments

The 1965 amendment divided the language in former paragraph g into the present first and third sentences of paragraph g; inserted "association" after

"firm" in two places in the first sentence of paragraph g; substituted "exchanging, or acting as a broker of" for "repairing, and reconditioning" after "business of buying, selling" in the first sentence of paragraph g; substituted "is qualified for issuance of a dealer's license under section 53-118" for "maintains a place of business with adequate facilities and equipment for the servicing, repair, maintenance, and reconditioning of new or used motor vehicles and also adequate display facilities

for at least one motor vehicle" in the first sentence of paragraph g; deleted from the end of the present first sentence of paragraph g a proviso reading, "provided, however, that a used car dealer only shall have a building as an established place of business and need no facilities for repair, maintenance and reconditioning of used cars"; inserted the second sentence in paragraph g; inserted "A dealer dealing in used cars only" at the beginning of the third sentence of paragraph g; and added the last sentence to paragraph k.

Repealing Clauses

Section 5 of Ch. 256, Laws 1965 read "Section 53-138, R. C. M. 1947, is repealed."

Section 7 of Ch. 256, Laws 1965 re-

pealed all acts and parts of acts in conflict therewith.

Separability Clause

Section 6 of Ch. 256, Laws 1965 read "If any clause, sentence, paragraph or part of this act shall be adjudged by any court of competent jurisdiction to be invalid or inoperative, such judgment shall not affect, impair or invalidate the remainder of this act but shall be confined in its operation to the clause, sentence, paragraph or part directly adjudged to be invalid or inoperative."

References

Safeco Ins. Co. of America v. Northwestern Mutual Ins. Co., 142 M 155, 382 P 2d 174.

53-136. (1763.4) Alteration or forgery of certificate of title or assignment thereof and penalty therefor. Any person who shall alter or forge or cause to be altered or forged, any motor vehicle certificate of title or any assignment thereof, or who shall hold or use any such certificate or assignment knowing the same to have been altered or forged, shall be deemed guilty of a felony, upon which conviction thereof shall be liable to pay a fine of not more than five thousand dollars (\$5,000) or to imprisonment in any penal institution within the state for a period of not more than ten (10) years, or both, in the discretion of the court.

History: En. Sec. 12, Ch. 113, L. 1925; amd. Sec. 1, Ch. 334, L. 1969.

Amendments

The 1969 amendment inserted "motor

vehicle" before "certificate of title" and deleted "issued by the registrar of motor vehicles pursuant to the provisions of this section" after "certificate of title."

53-138. (1763.6) Repealed.

Repeal

This section (Sec. 14, Ch. 113, L. 1925; Sec. 1, Ch. 221, L. 1947), relating to the

licensing of used car dealers, was repealed by Sec. 5, Ch. 256, Laws 1965.

53-139. (1763.7) Penalty for sale of vehicle with engine number altered or changed—application for special number. (1) Any person or persons, firm or corporation, who, thirty days after the taking effect of this section, shall sell or offer for sale in this state a vehicle, the original engine number of which has been destroyed, removed, altered, covered or defaced, with the exception of electrically propelled vehicles shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than two hundred dollars, nor more than five hundred dollars, and by imprisonment in the county jail for a term of not less than thirty days nor more than one hundred and eighty days, and upon a second or subsequent conviction under this section, the punishment shall be imprisonment in the state prison for a term of not less than one year nor more than five years: Provided, however, that any person or persons, firm or corporation, being the owner or custodian

of or having possession of a vehicle at the time of the taking effect of this article, the original engine number of which has been previously destroyed, removed, altered or defaced, shall before the expiration of thirty days after the taking effect of this article apply to the registrar of motor vehicles on a blank to be prepared and furnished by the registrar of motor vehicles upon request, for permission to make or stamp, or cause to be made or stamped on the engine of such vehicle, a special engine number.

(2) * * * [Same as parent volume.]

(3) Upon receipt of such application, together with a fee of two dollars (\$2.00), the registrar of motor vehicles shall issue to said applicant written permission to make or stamp on the engine of such vehicle a special engine number to be designated by the registrar of motor vehicles, and when such special engine number so designated has been stamped or otherwise placed on the engine of such motor vehicle it shall become and thereafter be the lawful engine number of such vehicle, for the purpose of identification and registration and for all other purposes under the provisions of this chapter, and the owner thereof may sell or transfer the same under said special engine number so designated by the registrar of motor vehicles; and any person or persons who shall destroy, remove, cover, alter or deface any special engine number so designated by the registrar of motor vehicles shall be deemed guilty of a felony and upon conviction thereof shall be punished by imprisonment in the state prison for a term of not less than two years nor more than ten years.

(4) In designating special engine numbers for motor vehicles under the provisions of this chapter the registrar of motor vehicles shall designate and number the same consecutively, beginning with the number (1), preceded by the letters S. N. and followed by the letters for each and every make of motor vehicle for which a special application engine number shall be made, and in the order of the filing of application therefor: Provided, that from and after the taking effect of this section, the registrar of motor vehicles shall not register any vehicle without an engine number or issue a license for the operation of the same except as specifically provided for herein; and further, before issuing said license the registrar of motor vehicles shall require of the applicant a statement that the special number assigned to be placed on the particular vehicle in question has been put on in a workmanlike manner, and this statement shall be certified to by the sheriff, chief of police, or other convenient peace officer, that he has inspected said vehicle and found said number to be on said motor vehicle as required by the registrar of motor vehicles. Nothing herein shall be construed to prevent any manufacturer or importer, or their agents other than dealers, from doing his own numbering on motor vehicles or parts removed or changed and replacing the numbered parts.

History: En. Sec. 15, Ch. 113, L. 1925;
amd. Sec. 31, Ch. 121, L. 1965.

Amendments

The 1965 amendment increased the fee specified near the beginning of subsection (3) from \$1.00 to \$2.00; and made minor changes in subsections (1) and (4).

53-139.1. Penalty for altering identification number. A person who willfully removes or falsifies an identification number of a motor vehicle or engine for a motor vehicle is guilty of a misdemeanor.

History: En. Sec. 1, Ch. 256, L. 1969.

Title of Act

An act to make unlawful acts relating to altering the identification numbers of motor vehicles.

53-145. Expiration of registration on transfer of ownership of vehicle—duty to remove plates. Upon the transfer of ownership of a motor vehicle, the registration of the motor vehicle shall expire and it shall be the duty of the transferor immediately to remove the license plates from the vehicle.

History: En. Sec. 1, Ch. 127, L. 1969.

Title of Act

An act pertaining to the registration of motor vehicles; requiring removal of license plates from motor vehicles upon transfer of ownership, authorizing transferor to transfer license plates from original motor vehicle to another motor ve-

hicle acquired during current registration year upon proper application and payment of fees and taxes, if any; requiring new application and registration for all motor vehicles transferred within ten (10) days; and amending sections 32-3203, 53-106, 53-106.6, 53-107, 53-108, 53-115 and 53-119, R. C. M. 1947.

53-146. Transfer of license plates to another motor vehicle. Should the transferor make application for the registration of another motor vehicle at any time during the remainder of the current registration year as shown on the original certificate of registration, he may file an application, in the office of the county treasurer where the motor vehicle is taxable, upon a form to be prepared and furnished by the registrar of motor vehicles, accompanied by the original certificate of registration, for the transfer of the license plates. The application for transfer of the license plates from the motor vehicle for which originally issued to a motor vehicle acquired by the same person in whose name the original license plates were issued shall be made within ten (10) days from date of acquiring the vehicle. The use of the license plates shall not be legalized until proper transfer of license plates has been made.

History: En. Sec. 2, Ch. 127, L. 1969; amd. Sec. 6, Ch. 138, L. 1971; amd. Sec. 3, Ch. 243, L. 1977.

tion for" before "transfer of the license plates" at the beginning of the second sentence.

Amendments

The 1971 amendment inserted "applica-

The 1977 amendment inserted "as shown on the original certificate of registration" in the first sentence.

53-147. New registration required for transferred vehicle—grace period—penalty—display of proof of purchase. Except as otherwise provided herein, the new owner of the transferred motor vehicle shall have the grace period of 20 calendar days from the date of purchase to make application and pay the taxes as provided by 53-114, as if the same was being registered for the first time in that registration year. If the motor vehicle was not purchased from a duly licensed motor vehicle dealer as provided in this chapter, it shall not be a violation of this chapter or any other law for the purchaser to operate the vehicle upon the streets and highways of this state without a certificate of registration during the 20-day period;

provided, that at all times during that period a bill of sale or other proof of purchase reciting the date of purchase shall be clearly displayed in the rear window of the motor vehicle at all times. Registration and license fees collected under 53-122 are not required to be paid when a license plate is transferred under this section and 53-146. Failure to make application within the time provided herein shall subject the purchaser to a penalty of \$10. The penalty shall be collected by the county treasurer at the time of registration, and shall be in addition to the fees otherwise provided by law.

History: En. Sec. 3, Ch. 127, L. 1969; amd. Sec. 7, Ch. 138, L. 1971; amd. Sec. 1, Ch. 187, L. 1974; amd. Sec. 4, Ch. 243, L. 1977; amd. Sec. 4, Ch. 399, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 243 and once by Ch. 399. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

The 1971 amendment inserted "Except as otherwise provided herein" at the beginning of the section.

The 1974 amendment substituted "shall have the grace period of ten (10) days from the date of purchase" in the first sentence for "shall, before operating or

driving the same upon the public highways of this state"; added the provisos to the first sentence beginning with "and, provided the motor vehicle was not purchased"; and added the second and third sentences.

Chapter 243, Laws of 1977, deleted "registration fees and" before "taxes" near the middle of the first sentence; and inserted the second sentence relating to the transfer of a license plate.

Chapter 399, Laws of 1977, substituted references to 20 calendar days in two places for references to ten days; deleted a provision at the end of the third sentence for "an additional penalty of \$1.00 for each additional day in which the vehicle remains unregistered, not to exceed \$25"; and made minor changes in phraseology, punctuation and style.

53-148. Personalized license plates authorized. Any person who is the registered owner of a motor vehicle, a truck, motor home, camping trailer, motorcycle, or other vehicle for the owner's personal use registered with the registrar of motor vehicles, or who makes application for original registration of a motor vehicle may, upon payment of the fee prescribed in section 53-153, apply to the registrar of motor vehicles for personalized license plates, in the manner prescribed in section 53-152 which plates shall be affixed to the motor vehicle for which registration is sought in lieu of the regular license plates provided for in this chapter.

History: En. 53-148 by Sec. 1, Ch. 257, L. 1973; amd. Sec. 1, Ch. 53, L. 1975.

Title of Act

An act to allow the registered owner of a passenger motor vehicle registered with the registrar of motor vehicles to obtain personalized license plates.

Amendments

The 1975 amendment deleted "passen-

ger" before "motor vehicle" throughout this section; inserted "a truck, motor home, camping trailer, motorcycle, or other vehicle for the owner's personal use" near the beginning of the section; substituted "a motor vehicle may" for "a passenger motor vehicle or renewal registration of a passenger motor vehicle may" in the middle of the section; and made minor changes in phraseology and style.

53-149. Color and design of personalized plates. The personalized license plates shall be the same color and design as regular passenger motor vehicle license plates and shall consist of numbers or letters, or any combination thereof not exceeding eight (8) positions and not less than two (2) positions, provided that there are no conflicts with existing

passenger, commercial, trailer, motorcycle or special license plate series under this title.

History: En. 53-149 by Sec. 2, Ch. 257,
L. 1973.

53-150. Definition of personalized license plates. Personalized license plates, as used in this article [chapter], mean license plates that have displayed upon them the registration number assigned to the passenger motor vehicle for which such registration number was issued in a combination of letters or numbers, or both, requested by the owner of the vehicle.

History: En. 53-150 by Sec. 3, Ch. 257,
L. 1973.

53-151. Personalized license plates restricted to registered owner. Personalized license plates shall be issued only to the registered owner of the vehicle upon which they are displayed.

History: En. 53-151 by Sec. 4, Ch. 257,
L. 1973.

53-152. Application for personalized plates—duplication—good taste. An applicant for issuance of personalized license plates or renewal of such plates in subsequent years pursuant to this act shall file an application therefor in such form and by such date as the department may require, indicating thereon the combination of letters or numbers, or both, requested as a registration number. There shall be no duplication of registration numbers, and the registrar of motor vehicles may refuse to issue any combination of letters or numbers, or both, that may carry connotations offensive to good taste and decency or which would be misleading or a duplication of license plates provided for elsewhere in this title.

History: En. 53-152 by Sec. 5, Ch. 257,
L. 1973.

53-153. Fees for personalized plates—disposition. In addition to all other fees and taxes imposed by law, the applicant for a personalized license plate shall pay a fee of twenty dollars (\$20) for the original personalized license plate and a fee of five dollars (\$5) for each transfer or renewal thereof. All revenue derived from the fee as provided herein shall be deposited in the motor vehicle recording account of the earmarked revenue fund.

History: En. 53-153 by Sec. 6, Ch. 257,
L. 1973.

53-154. Definitions. For purposes of this act "vehicle" means any motor vehicle as defined in section 53-104, R. C. M. 1947, subject to annual registration in this state, except:

(a) vehicles owned or leased and operated by the government of the United States, of the state of Montana or its political subdivisions;

(b) mobile homes and motor homes;

- (c) vehicles that are registered in accordance with, or subject to, sections 53-106.1, 53-106.2, 53-106.8, or 53-148, R. C. M. 1947;
- (d) trucks exceeding a licensed gross vehicle weight of 10,000 pounds;
- (e) trailers, semitrailers, tractors, buses, motorcycles, and cycle motors;
- (f) special mobile equipment as defined in section 53-642, R. C. M. 1947.

History: En. 53-154 by Sec. 1, Ch. 74, L. 1975.

for the payment of taxes and fees thereon; providing for a lien date; providing for the administration of the act; and amending sections 32-3201, 32-3315, 53-108, 53-114, 53-115, and 84-406, R. C. M. 1947; and providing an effective date.

Title of Act
An act to establish anniversary date registration for motor vehicles; providing

53-155. Registration period based on first registration. Notwithstanding any other provisions of Title 53 regarding the registration of motor vehicles, commencing January 1, 1976, all vehicles subject to the provisions of this act shall be registered for twelve (12) month periods based upon the time they are first registered in this state pursuant to this act.

History: En. 53-155 by Sec. 2, Ch. 74, L. 1975.

53-156. Registration periods designated. There shall be ten (10) registration periods, each of which shall commence on the first day of a calendar month. The periods are designated as follows:

- | | |
|---------------------------------------|-------------|
| (1) January 1 through January 31 | 1st period |
| (2) February 1 through February 28/29 | 2nd period |
| (3) March 1 through March 31 | 3rd period |
| (4) April 1 through April 30 | 4th period |
| (5) May 1 through May 31 | 5th period |
| (6) June 1 through June 30 | 6th period |
| (7) July 1 through July 31 | 7th period |
| (8) August 1 through August 31 | 8th period |
| (9) September 1 through September 30 | 9th period |
| (10) October 1 through October 31 | 10th period |

For purposes of this act the period November 1 through November 30 shall be considered the 10th period preceding and the period December 1 through December 31 shall be considered the 1st period of the year following.

History: En. 53-156 by Sec. 3, Ch. 74, L. 1975.

53-157. Reregistration on anniversary date—registrar to make rules. A vehicle that has once been registered for any of the above-designated periods shall thereafter be reregistered for a like period on or before the anniversary date of the initial registration, unless that period be changed as provided in this section. The anniversary date for reregistration shall be the 25th day of the month for the designated registration period. The registrar of motor vehicles shall adopt rules for the implementation and administration of this act and for the identification of the registration on

the vehicles. The registrar shall provide for simultaneous registration of multiple vehicles which have common ownership. The rules shall provide for a change of the registration period to coincide with the date an owner desires to register his vehicles.

History: En. 53-157 by Sec. 4, Ch. 74, L. 1975; amd. Sec. 1, Ch. 183, L. 1977.

Amendments

The 1977 amendment added "unless that

period be changed as provided in this section" to the first sentence; deleted "regardless of their individual registration periods" from the end of the fourth sentence; and added the last sentence.

53-158. Transitional and new registrations. Each vehicle currently registered in this state and subject to the provisions of this act shall be reregistered under the provisions of this act and shall be assigned a registration period which shall correspond to the last digit on the license plate issued to that vehicle in the year 1975. Vehicles which are registered for the first time in this state shall be assigned a registration period corresponding to when they are first registered in this state. The registration period for a vehicle shall thereafter remain the same from year to year.

History: En. 53-158 by Sec. 5, Ch. 74, L. 1975.

53-159. When vehicle property tax is due. Property taxes and new car taxes shall be paid on the date of registration or reregistration of the vehicle. If the anniversary date for reregistration of a vehicle shall pass while the vehicle is owned and held for sale by a licensed new or used car dealer, property taxes shall abate on such vehicle properly reported with the department of revenue until the vehicle is sold and thereafter the purchaser shall pay the prorata balance of the taxes due and owing on the vehicle.

History: En. 53-159 by Sec. 6, Ch. 74, L. 1975.

53-160. Department of revenue and department of highways to make rules. The department of revenue shall adopt rules for the payment of property taxes and the department of highways shall adopt rules for the payment of new car taxes under the provisions of this act. The department of revenue may adopt regulations for the proration of taxes for the implementation and administration of this act, but shall specifically provide that new car taxes shall be for a full registration period of not less than eleven (11) months and not more than thirteen (13) months.

History: En. 53-160 by Sec. 7, Ch. 74, L. 1975.

53-161. Proration of taxes and fees. In the event a vehicle's registration period is changed under 53-157, all taxes and other fees due thereon shall be prorated and paid from the last day of the old period until the first day of the new period in which the vehicle shall be registered. Thereafter taxes and other fees must be paid from the first day of the new period for a minimum period of 1 year. When the change is to a later registration period, taxes and fees shall be prorated and paid based on the same tax year as the original registration period. Thereafter, during the

appropriate anniversary registration period, each vehicle shall again register or reregister and thereon shall pay all taxes and fees due thereon for a twelve (12) month period.

History: En. 53-161 by Sec. 8, Ch. 74, L. 1975; amd. Sec. 2, Ch. 183, L. 1977.

Amendments

The 1977 amendment rewrote the first sentence which read "For purposes of implementation, all vehicles subject to this act shall be registered or reregistered as previously required by law between January 1, 1976 and February 15, 1976, pro-

vided, however, that all taxes and other fees due thereon shall be prorated from January 1, 1976 until the first day of the period in which the vehicle shall be registered under the provisions of this act and as indicated by the last digit on the license plate issued to such vehicle in 1975"; and added the second and third sentences.

53-162. Assessment on first day of registration period. Vehicles subject to the provisions of this act shall be assessed as of the first day of the year in which the registration period occurs and a lien for taxes and fees due thereon shall occur on the anniversary date of the registration and shall continue thereafter until such fees and taxes shall have been paid.

History: En. 53-162 by Sec. 9, Ch. 74, L. 1975.

CHAPTER 2—USE OF HIGHWAYS BY NONRESIDENT CAR OWNERS— ACCIDENTS—SERVICE OF PROCESS

53-202. Secretary of state attorney for service of process.

References

Olsen v. Dairyland Mut. Ins. Co., 248 F Supp 639.

53-203. Operation of motor vehicle as appointment, etc.

References

Olsen v. Dairyland Mut. Ins. Co., 248 F Supp 639.

53-204. Repealed.

Repeal

This section (Sec. 4, Ch. 10, L. 1937; Sec. 10, Ch. 117, L. 1961), relating to

service of process on nonresident motorist, was repealed by Sec. 2, Ch. 189, Laws 1963.

CHAPTER 4—ELIMINATION OF RECKLESS DRIVING—RESPONSIBILITY OF MOTOR VEHICLE OWNERS AND OPERATORS

Section 53-418.	Definitions.
53-420.	Supervisor to furnish operating record.
53-428.	Matters not to be evidence in civil suits.
53-431.	Suspension to continue until judgments paid and proof given—maximum period of suspension.
53-432.	Satisfaction of judgments.
53-438.	Motor vehicle liability policy defined.
53-449.	Violations of act—penalties.
53-450.	Exceptions.

53-418. Definitions. The following words and phrases, when used in this act shall, for the purposes of this act, have the meanings respectively

ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

1 to 11. * * * [Same as parent volume.]

12. "Proof of financial responsibility"—Proof of ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of said proof, arising out of the ownership, maintenance or use of a motor vehicle, in the amount of ten thousand dollars (\$10,000) because of bodily injury to or death of one person in any one accident, and, subject to said limit for one person, in the amount of twenty thousand dollars (\$20,000) because of bodily injury to or death of two or more persons in any one accident, and in the amount of five thousand dollars (\$5,000) because of injury to or destruction of property of others in any one accident.

13 and 14. * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 204, L. 1951; amd. Sec. 1, Ch. 30, L. 1967.

Amendments

The 1967 amendment amended subsection 12 to increase the minimum requirements of financial responsibility from \$5,000 to \$10,000 for bodily injury to or death of one person in any one accident, from \$10,000 to \$20,000 for bodily injury to or death of two or more persons in any one accident, and from \$1,000 to \$5,000 for injury to or destruction of property of others in any one accident.

Cross-References

Highway patrol board abolished and functions transferred, sec. 82A-1205 (2).

Highway patrol functions transferred, sec. 82A-1206.

Registrar's position abolished and functions transferred, sec. 82A-1205 (1).

Intent of Legislature

General legislative intent in enacting financial responsibility provisions of the Motor Vehicle Safety Responsibility Act was: (1) to provide for voluntary and not compulsory automobile liability insurance for motorist who has not become involved

in automobile accident, (2) to require compulsory proof of ability to respond in damages resulting from automobile accident after motorist becomes involved in such accident, and (3) to require compulsory proof of financial responsibility for future automobile accidents, from motorist (a) convicted of certain driving offenses, or (b) who has outstanding unsatisfied judgment against him as result of past automobile accident; motorist who voluntarily carried ordinary automobile liability policy at time he became involved in accident was exempted from requirements of proof of ability to respond in damages whereas motorist who has neither been convicted nor forfeited bail for one of driving offenses referred to in act nor who has outstanding unsatisfied judgment against him as result of previous automobile accident is not required to furnish proof of future financial responsibility at all. *Boldt v. State Farm Mut. Automobile Ins. Co.*, 151 M 337, 443 P 2d 33.

References

Schwentner v. White, 199 F Supp 710, 711.

53-420. Supervisor to furnish operating record. The supervisor shall upon request furnish any person a certified abstract of the operating record of any person subject to the provisions of this act, which abstract shall also fully designate the motor vehicles, if any registered in the name of such person, and, if there shall be no record of any conviction of such person of violating any law relating to the operation of a motor vehicle or of any injury or damage caused by such person, the supervisor shall so certify. A fee of two dollars (\$2) shall be paid for said certified abstract.

History: En. Sec. 3, Ch. 204, L. 1951; amd. Sec. 17, Ch. 121, L. 1965; amd. Sec. 1, Ch. 381, L. 1971.

Amendments

The 1965 amendment increased the fee specified in the final sentence from 50¢ to \$1.00.

The 1971 amendment increased the fee specified in the final sentence from \$1.00 to \$2.00.

53-421 to 53-427. Repealed.

Repeal

Sections 53-421 to 53-427 (Secs. 4 to 10, Ch. 204, L. 1951; Sec. 1, Ch. 187, L. 1957; Secs. 1, 2, Ch. 83, L. 1959; Sec. 2, Ch. 30, L. 1967; Sec. 1, Ch. 55, L. 1971; Sec.

1, Ch. 56, L. 1974), relating to requirements as to deposit of security following an accident, were repealed by Sec. 4, Ch. 184, Laws of 1974.

53-428. Matters not to be evidence in civil suits. Neither the action taken by the supervisor pursuant to this act, nor the findings, if any, of the supervisor upon which such action is based, shall be referred to in any way, nor be any evidence of the negligence or due care of either party, at the trial of any action at law to recover damages.

History: En. Sec. 11, Ch. 204, L. 1951; amd. Sec. 1, Ch. 184, L. 1974.

Amendments

The 1974 amendment deleted "the re-

port required by section 53-421" after "Neither" at the beginning of the section; deleted "nor the security filed as provided in this act" before "shall be referred to"; and made minor changes in phraseology.

53-431. Suspension to continue until judgments paid and proof given—maximum period of suspension. Such license, registration and non-resident's operating privilege shall remain so suspended and shall not be renewed, nor shall any such license or registration be thereafter issued in the name of such person, including any such person not previously licensed, unless and until every such judgment is stayed, satisfied in full or to the extent hereinafter provided, and until the said person gives proof of financial responsibility subject to the exemptions stated in sections 53-430 and 53-433, or six (6) years have passed from date judgment was first entered as provided in section 93-5708.

History: En. Sec. 14, Ch. 204, L. 1951; amd. Sec. 1, Ch. 437, L. 1973.

Amendments

The 1973 amendment added "or six (6) years have passed from the date judgment

was first entered as provided in section 93-5708" to the end of the first paragraph; and deleted a second paragraph purporting to save the requirements of the act against a discharge in bankruptcy.

53-432. Satisfaction of judgments. Judgments herein referred to shall, for the purposes of this act only, be deemed satisfied:

1. when ten thousand dollars (\$10,000) has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of one person as the result of any one accident; or
2. when, subject to such limit of ten thousand dollars (\$10,000) because of bodily injury to or death of one person, the sum of twenty thousand dollars (\$20,000) has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury or death of two or more persons as the result of any one accident; or
3. when five thousand dollars (\$5,000) has been credited upon any judgment or judgments rendered in excess of that amount because of injury to or destruction of property of others as a result of any one accident;

Provided, however, payments made in settlement of any claims because of bodily injury, death or property damage arising from a motor vehicle accident shall be credited in reduction of the amounts provided for in this section.

History: En. Sec. 15, Ch. 204, L. 1951; amd. Sec. 3, Ch. 30, L. 1967. amounts required by paragraphs 1 and 2; and increased the amount required by paragraph 3 from \$1,000 to \$5,000.

Amendments

The 1967 amendment doubled the

53-438. Motor vehicle liability policy defined. (a) * * * [Same as parent volume.]

(b) Such owner's policy of liability insurance:

1. shall designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby to be granted; and

2. shall insure the person named therein and any other person, as insured, using any such motor vehicle or motor vehicles with the express or implied permission of such named insured, against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of such motor vehicle or motor vehicles within the United States of America or the Dominion of Canada, subject to limits exclusive of interest and costs, with respect to each such motor vehicle, as follows: twenty-five thousand dollars (\$25,000) because of bodily injury to or death of one person in any one accident and subject to said limit for one person, fifty thousand dollars (\$50,000) because of bodily injury to or death of two or more persons in any one accident, and five thousand dollars (\$5,000) because of injury to or destruction of property of others in any one accident.

(c) to (f) * * * [Same as parent volume.]

(g) No motor vehicle policy shall be subject to cancellation, termination, or premium increase, due to injury or damage incurred by the insured or operator unless the insured or operator be found to have violated a traffic law or ordinance of the state or a city, be found negligent or contributorily negligent in a court of law, or by the arbitration proceedings contained in chapter 201 of Title 93, R. C. M. 1947, or pays damages to another party whether by settlement or otherwise. In no event may a premium be increased during the term of the policy unless there is a change in exposure.

(h) Any policy which grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy and such excess or additional coverage shall not be subject to the provisions of this act. With respect to a policy which grants such excess or additional coverage the term "motor vehicle liability policy" shall apply only to that part of the coverage which is required by this section.

(i) Any motor vehicle liability policy may provide that the insured shall reimburse the insurance carrier for any payment the insurance carrier

would not have been obligated to make under the terms of the policy except for the provisions of this act.

(j) Any motor vehicle liability policy may provide for the prorating of the insurance thereunder with other valid and collectible insurance.

(k) The requirements for a motor vehicle liability policy may be fulfilled by the policies of one or more insurance carriers which policies together meet such requirements.

(l) Any binder issued pending the issuance of a motor vehicle liability policy shall be deemed to fulfill the requirements for such a policy.

(m) A reduced limits endorsement shall not be issued by any company to be attached to any policy issued in compliance with this section.

History: En. Sec. 21, Ch. 204, L. 1951; amd. Sec. 4, Ch. 30, L. 1967; amd. Sec. 1, Ch. 177, L. 1973; amd. Sec. 1, Ch. 260, L. 1973; amd. Sec. 1, Ch. 295, L. 1974; amd. Sec. 1, Ch. 526, L. 1975.

Amendments

The 1967 amendment increased the minimum proof of financial responsibility from \$5,000 to \$10,000 because of bodily injury to or death of one person in any one accident, from \$10,000 to \$20,000 because of bodily injury to or death of two or more persons in any one accident, and from \$1,000 to \$5,000 because of injury to or destruction of property of others in any accident, all in subsection (b).

Chapter 177, Laws of 1973 inserted subsection (g); and relettered the succeeding subsections.

Chapter 260, Laws of 1973, added as subsection (l) the matter shown above as subsection (m).

The 1974 amendment added the last sentence to subsection (g).

The 1975 amendment increased the limits for bodily injury to one person in subdivision (b)2 from \$10,000 to \$25,000; increased the limits for bodily injury in any one accident in subdivision (b)2 from \$20,000 to \$50,000; and made minor changes in style.

Defenses Available to Insurer

Insurance company being sued by injured party for amount of judgment previously secured against insured motorist was entitled to defend on ground that accident was not reported to it until year later, in breach of the policy provisions requiring prompt notice, despite contention that policy was subject to that portion

of act eliminating policy defenses. *Boldt v. State Farm Mut. Automobile Ins. Co.*, 151 M 337, 443 P 2d 33.

Garage Business Exclusion

Garage business exclusion clause of policy was not violative of public policy as expressed in statute in absence of showing that policy was issued to show proof of financial responsibility. *Northern Assurance Co. of America v. Truck Ins. Exchange*, 151 M 132, 439 P 2d 760.

Permitted User

Driver of insured's automobile was permitted user under this section even though permission came from insured's son and even though son had been told not to lend out the automobile, since the automobile was purchased for son's exclusive use away from home and son had ostensible authority to permit its use by third party. *Cascade Ins. Co. v. Glacier General Ins. Co.*, 156 M 236, 479 P 2d 259.

Primary and Secondary Insurance

Where first liability policy provided primary coverage to driver when he was driving other vehicles except when there was "other collectible insurance" in which case it provided excess coverage, and second liability policy owned by auto agency insured driver only if there were "no other valid and collectible automobile liability insurance," the first policy was liable for the cost of defending an action for damages arising out of the accident. *Phoenix Ins. Co. v. Nationwide Mutual Ins. Co.*, 335 F Supp 671.

References

Empire Fire & Marine Ins. Co. v. Goodman, 147 M 396, 412 P 2d 569.

53-449. Violations of act—penalties. (1) Any person who shall forge or, without authority, sign any evidence of proof of financial responsibility, or who files or offers for filing any such evidence of proof knowing or having reason to believe that it is forged or signed without authority, shall be

fined not more than one thousand dollars (\$1,000.00) or imprisoned for not more than one (1) year, or both.

(2) Any person whose license or registration or nonresident's operating privilege has been suspended or revoked under this act and who, during such suspension or revocation drives any motor vehicle upon any highway or knowingly permits any motor vehicle owned by such person to be operated by another upon any highway, except as permitted under this act, shall be fined not more than five hundred dollars (\$500.00) or imprisoned not exceeding six (6) months, or both.

(3) Any person willfully failing to return license or registration as required in section 53-448 shall be fined not more than five hundred dollars (\$500.00) or imprisoned not to exceed thirty (30) days, or both.

History: En. Sec. 32, Ch. 204, L. 1951;
amd. Sec. 2, Ch. 184, L. 1974.

Amendments

The 1974 amendment deleted a beginning subsection relating to failure to re-

port an accident as required in former section 53-421; deleted reference to giving false information in such a report from the beginning of subsection (1); and made minor changes in style.

53-450. Exceptions. This act shall not apply with respect to any motor vehicle owned by the United States, this state or any political subdivision of this state or any municipality therein; nor, except for section 53-443, with respect to any motor vehicle which is subject to the provisions of section 8-113, requiring insurance or other security.

History: En. Sec. 33, Ch. 204, L. 1951;
amd. Sec. 3, Ch. 184, L. 1974.

Amendments

The 1974 amendment deleted "53-421" before "section 53-443."

Repealing Clause

Section 4 of Ch. 184, Laws 1974 read "Sections 53-421, 53-422, 53-423, 53-424, 53-425, 53-426, 53-427, R. C. M. 1947, are repealed."

CHAPTER 5—STATE-OWNED OR LEASED MOTOR VEHICLES

Section 53-514. Department of highways, motor pool division, custodian of motor vehicles owned or leased by state.

53-515. Rules—authority and enforcement.

53-516. Seal on motor vehicles.

53-517. State car for state business only—compensation for driving personal vehicle.

53-518. Adoption of travel rules—contents—removal from office for violations.

53-519. Requisitions for purchases—operating history records.

53-519.1. Transfer of vehicles to other agency.

53-519.2. Regulations for interagency rental.

53-519.3. Regulations concerning use of vehicles.

53-520. Certain motor vehicles exempted.

53-521. Violation a misdemeanor—dismissal.

53-501. Repealed.

Repeal

Section 53-501 (Sec. 1, Ch. 2, L. 1941; Sec. 1, Ch. 211, L. 1953), relating to color

and labeling of state-owned vehicles, was repealed by Sec. 9, Ch. 320, Laws 1971.

53-503 to 53-508. Repealed.

Repeal

Sections 53-503 to 53-508 (Secs. 1 to 6, Ch. 93, L. 1941; Secs. 2 to 6, Ch. 211, L.

1953; Sec. 1, Ch. 157, L. 1961), relating to the use of state-owned vehicles, were repealed by Sec. 9, Ch. 320, Laws 1971.

53-510 to 53-513. Repealed.**Repeal**

Sections 53-510 to 53-513 (Sec. 9, Ch. 93, L. 1941; Sec. 7, Ch. 211, L. 1953; Secs.

1 to 3, Ch. 181, L. 1969), relating to the state motor vehicle pool, were repealed by Sec. 9, Ch. 320, Laws 1971.

53-514. Department of highways, motor pool division, custodian of motor vehicles owned or leased by state. The department of highways, motor pool division is the custodian of all motor vehicles operated out of the Helena area used primarily to carry passengers or having a cargo rating of three-quarters ($\frac{3}{4}$) of a ton or less and which do not carry specialized equipment that would render them unfit for interagency use owned or leased by the state or its agencies. The legal title to state-owned motor vehicles shall be held in the name of the state only and all agencies holding title to motor vehicles are hereby required to transfer the same to the state. In instances where such transfer would affect the federal funding of the agency involved, the agency transferring a vehicle in accordance with this chapter shall be reimbursed in the amount of the fair value of the vehicle transferred necessary to assure continued participation in federal funding of [the] program.

History: En. Sec. 1, Ch. 320, L. 1971; amd. Sec. 173, Ch. 316, L. 1974; amd. Sec. 1, Ch. 355, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 316 and once by Ch. 355. Neither amendatory act mentioned or entirely incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Title of Act

An act providing for the transfer of authority of state-owned motor vehicles to the highway commission; providing for the establishment of a state motor pool for maintenance and storage; providing

for regulation and use of vehicles; providing for lettering and identification; providing for records; providing for exceptions; establishing a penalty and repealing sections 53-501, 53-503, 53-504, 53-505, 53-506, 53-507, 53-508 and 53-510, R. C. M. 1947, and sections 53-511, 53-512 and 53-513, R. C. M. 1947, enacted as Chapter 181, Laws of 1969.

Amendments

Prior to the 1974 amendments this section read: "The state highway commission is hereby constituted the custodian of all motor vehicles owned or leased by the state of Montana or its boards, commissions or agencies operated out of any areas or locations where five (5) or more state vehicles or three (3) or more state agencies are located."

53-515. Rules—authority and enforcement. The department of highways, motor pool division is hereby delegated the power and authority:

(1) to adopt and enforce reasonable rules governing the use and operation of all motor vehicles under control of the department of highways, motor pool division;

(2) to assign the use of all state-owned or leased motor vehicles under its control to state officers, departments, bureaus, institutions and commissions, or employees thereof;

(3) to charge the individual state agencies using the motor vehicles the actual costs for administration and their maintenance, service, storage and replacement.

History: En. Sec. 2, Ch. 320, L. 1971; amd. Sec. 174, Ch. 316, L. 1974; amd. Sec. 2, Ch. 355, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 316 and once by Ch. 355.

Neither amendatory act mentioned or entirely incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 316, Laws of 1974, substituted "rules" for "rules and regulations"; substituted references to "department" for references to "state highway commission" and "commission"; and made minor changes in phraseology.

Chapter 355, Laws of 1974 substituted references to "department of highways, motor pool division" for references to "state highway commission" and "commission"; inserted the numerical subdivision designations; substituted "motor vehicles under control of the department of highways, motor pool division" for "motor vehicles used in the service in the state of Montana" in subdivision (1); and made minor changes in phraseology and punctuation.

53-516. Seal on motor vehicles. A motor vehicle owned by the state shall have a seal eight (8) inches in diameter placed upon the vehicle in accordance with the rules adopted by the department of highways, motor pool division.

History: En. Sec. 3, Ch. 320, L. 1971; amd. Sec. 175, Ch. 316, L. 1974; amd. Sec. 3, Ch. 355, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 316 and once by Ch. 355. Neither amendatory act mentioned or entirely incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made

a composite section embodying the changes made by both amendments.

Amendments

Chapter 316, Laws of 1974, substituted "department of highways, motor pool division" for "highway commission" at the end of the section.

Chapter 355, Laws of 1974, substituted "department" for "highway commission" at the end of the section and made minor changes in phraseology.

53-517. State car for state business only—compensation for driving personal vehicle. A state officer or employee may not use a state-owned or leased motor vehicle for his own personal and private use, nor may he be compensated for driving his own motor vehicle unless that motor vehicle is used on state business.

History: En. Sec. 4, Ch. 320, L. 1971; amd. Sec. 176, Ch. 316, L. 1974; amd. Sec. 4, Ch. 355, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 316 and once by Ch. 355. Neither amendatory act mentioned or entirely incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has

made a composite section embodying the changes made by both amendments.

Amendments

Chapter 316, Laws of 1974, made minor changes in phraseology.

Chapter 355, Laws of 1974, inserted "or leased motor" after "state-owned" and substituted "motor vehicle" for "vehicle" after "driving his own."

53-518. Adoption of travel rules—contents—removal from office for violations. The department of highways, motor pool division shall adopt travel rules providing:

(a) For filing an application for travel showing necessity for trips, points to be visited, approximate time of departure and return;

(b) For filing a report upon completion of the trip, showing actual points reached, mileage traveled and car cost record data;

(c) For recording in the car operating history record book all items of expense incurred in the purchase of gas, oil, repairs, labor, storage, or service; and,

(d) That a decal be affixed to the instrument panel of every state-owned vehicle with the following information contained on the decal:

Any officer or employee of the state government who uses or authorizes the use of any state-owned motor-propelled passenger carrying vehicle, or of any motor-propelled passenger carrying vehicle leased by the state government, for other than official purposes shall be summarily removed from office by the head of the department of establishment concerned.

History: En. Sec. 5, Ch. 320, L. 1971; amd. Sec. 177, Ch. 316, L. 1974; amd. Sec. 5, Ch. 355, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 316 and once by Ch. 355. Neither amendatory act mentioned or entirely incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 316, Laws of 1974, substituted "travel rules" for "travel regulations" in the caption and in the introductory clause; substituted "department" for "state highway commission" in the introductory clause; and made minor changes in phraseology.

Chapter 355, Laws of 1974 substituted "department of highways, motor pool division" for "state highway commission" in the introductory clause.

53-519. Requisitions for purchases—operating history records. (1) All requisitions for motor vehicle purchases shall be submitted to the department of administration twice yearly, at the times that it specifies, and other requisitions for automobile purchases may not be accepted by it, unless the governor considers the purchase to be an emergency necessity.

(2) All motor vehicle operating history records for motor vehicles under control of the department of highways, motor pool division shall be entered in the department of highways, motor pool division. These records shall show the purchase price of the vehicle, and the items of expense incurred in the operation of the vehicle, including the expenses of gas, oil, repairs, labor, storage and service. A complete summary of the operating cost and history record of all state-owned or leased vehicles and trucks shall be prepared for each fiscal year.

History: En. Sec. 6, Ch. 320, L. 1971; amd. Sec. 178, Ch. 316, L. 1974; amd. Sec. 6, Ch. 355, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 316 and once by Ch. 355. Neither amendatory act mentioned or entirely incorporated the changes made by the other. The compiler resolved apparent conflicts in the amendatory acts in subsection (2) in favor of the amendment by Ch. 355 which was adopted later in the legislative session. Otherwise, a composite section embodying the changes made by both amendments has been made.

Amendments

Chapter 316, Laws of 1974, inserted the numerical subsection designations at the

beginning of the paragraphs; substituted references to "department of administration" in subsections (1) and (2) for references to "state controller"; and made minor changes in phraseology.

Chapter 355, Laws of 1974 substituted "motor vehicle purchases" for "automobile purchases" in subsection (1); substituted "motor vehicle operating history" for "automobile operating history" in subsection (2); inserted "for motor vehicles under control of the department of highways, motor pool division" after "records" in the first sentence of subsection (2); substituted "department of highways, motor pool division" for "office of the state controller" at the end of the first sentence in subsection (2); and inserted "or leased" after "state-owned" in the last sentence of subsection (2).

53-519.1. Transfer of vehicles to other agency. All motor vehicles in the custody of the department of highways, motor pool division, which are not placed under custody of the department of highways, motor pool division, by section 53-514 shall be equitably transferred to the custody of those agencies that have need of vehicles as demonstrated by use records.

History: En. 53-519.1 by Sec. 7, Ch. 355, L. 1974.

Title of Act

An act to amend sections 53-514, 53-515, 53-516, 53-517, 53-518, 53-519, 59-801, and 59-802, R. C. M. 1947; to require the transfer of title of certain state-owned vehicles to the name of the state of Montana; to constitute the department

of highways, motor pool division, as custodian of certain motor vehicles; to constitute custody of certain motor vehicles in the user agencies; to provide that state agencies pay for all actual costs of using motor vehicles; to regulate the use of privately owned vehicles by state employees; and to require the department of highways to maintain motor vehicle operating history records.

53-519.2. Regulations for interagency rental. The department of highways, motor pool division, shall promulgate regulations for interagency rental of motor vehicles. These regulations shall govern the manner in which vehicles in the custody of one agency and for a time not required for use by that agency can be rented by another agency for its use. These regulations shall also establish the charge for vehicle rental which may include reimbursement of actual costs for administration, maintenance, service, operation, storage and replacement costs of these vehicles.

History: En. 53-519.2 by Sec. 8, Ch. 355, L. 1974.

53-519.3. Regulations concerning use of vehicles. The department of highways shall establish reasonable rules and regulations governing:

(a) Employee responsibility for misuse and negligent damage of state-owned or leased vehicles;

(b) Determination of when the use of privately owned vehicles on state business may be justified as in the best interest of the state;

(c) Procedures for determining when a state vehicle is not available for use.

History: En. 53-519.3 by Sec. 11, Ch. 355, L. 1974.

53-520. Certain motor vehicles exempted. This chapter does not apply to a motor vehicle used in the service of the governor, the attorney general or the highway patrol.

History: En. Sec. 7, Ch. 320, L. 1971; amd. Sec. 179, Ch. 316, L. 1974.

Amendments

The 1974 amendment substituted "chapter" for "provisions of this act"; and made minor changes in phraseology.

53-521. Violation a misdemeanor—dismissal. A state officer or employee violating this chapter is guilty of a misdemeanor, and upon conviction shall be dismissed from state employment.

History: En. Sec. 8, Ch. 320, L. 1971; amd. Sec. 180, Ch. 316, L. 1974.

Amendments

The 1974 amendment substituted "chapter" for "provisions of this act"; and made minor changes in phraseology.

Repealing Clause

Section 9 of Ch. 320, Laws 1971 read "Sections 53-501, 53-503, 53-504, 53-505, 53-506, 53-507, 53-508 and 53-510, R. C. M. 1947, and sections 53-511, 53-512 and 53-513, R. C. M. 1947, enacted as chapter 181, Laws of 1969, are hereby repealed."

CHAPTER 6—ADDITIONAL FEES OR TAXES ON MOTOR VEHICLES

- Section 53-620. [Transferred.]
 53-624. [Transferred.]
 53-626, 53-627. [Transferred.]
 53-632, 53-633. [Transferred.]
 53-638.1. [Transferred.]
 53-639.1. Special mobile equipment—exemption from registration and payment of fees and charges—identification plate—application—fee—publicly owned special mobile equipment.
 53-639.2. Exemptions of vehicles not capable of operation on highways.
 53-640. Issuance of identification plate and receipt—contents.
 53-642. "Special mobile equipment" defined.
 53-644. Camper—definition.
 53-645. Tax-paid decal required on camper—application for decal—fee—issuance.
 53-646. Violation as misdemeanor—fine.
 53-647. Annual application for decals.

53-615 to 53-619. Repealed.

Repeal

These sections (Secs. 1 to 5, Ch. 219, L. 1951; Sec. 1, Ch. 139, L. 1953; Sec. 1, Ch. 89, L. 1955; Sec. 1, Ch. 175, L. 1955; Sec. 1, Ch. 177, L. 1955; Sec. 1, Ch. 251, L. 1955; Sec. 1, Ch. 258, L. 1955; Sec. 1, Ch. 103, L. 1959; Sec. 1, Ch. 211, L. 1959; Sec. 1, Ch. 193, L. 1961; Sec. 1, Ch. 150,

L. 1963; Sec. 1, Ch. 195, L. 1965; Sec. 1, Ch. 224, L. 1965), relating to additional fees and taxes payable for vehicles, were repealed by Sec. 12-109, Ch. 197, Laws 1965. For new law, see secs. 32-3201, 32-3301 to 32-3310, 32-3312, 32-3314, and 32-3315.

53-620. [Transferred.]

Compiler's Notes

Section 181, Ch. 316, Laws of 1974 re-numbered this section as sec. 32-3205.1.

53-621 to 53-623. Repealed.

Repeal

These sections (Secs. 7 to 9, Ch. 219, L. 1951; Sec. 1, Ch. 226, L. 1959), relating to

fees and penalties for trucks and trailers, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

53-624. [Transferred.]

Compiler's Notes

Section 182, Ch. 316, Laws of 1974 re-numbered this section as sec. 32-3318.

53-625. Repealed.

Repeal

This section (Sec. 11, Ch. 219, L. 1951; Sec. 1, Ch. 231, L. 1957), relating to re-

ciprocity and fleet registration, was repealed by Sec. 27, Ch. 206, Laws 1963.

53-626, 53-627. [Transferred.]**Compiler's Notes**

Sections 183 and 184, Ch. 316, Laws of

1974 renumbered these sections as 32-3319 and 32-3320.

53-628 to 53-631. Repealed.**Repeal**

These sections (Secs. 14, 15, Ch. 219, L. 1951; Secs. 1, 2, Ch. 133, L. 1953; Sec. 1, Ch. 104, L. 1957), relating to markings of

trucks and buses, municipal taxes, and to drive-away and tow-away transporters, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

53-632, 53-633. [Transferred.]**Compiler's Notes**

Sections 185 and 186, Ch. 316, Laws

of 1974 renumbered these sections as secs. 32-3407 and 32-3408.

53-634 to 53-638. Repealed.**Repeal**

These sections (Secs. 5 to 9, Ch. 133, L. 1953), relating to drive-away and tow-

away transporters, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

53-638.1. [Transferred.]**Compiler's Notes**

Section 187, Ch. 316, Laws of 1974 renumbered this section as sec. 53-639.2.

53-639. Repealed.**Repeal**

This section (Sec. 1, Ch. 183, L. 1955), relating to special mobile equipment, was

repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

53-639.1. Special mobile equipment—exemption from registration and payment of fees and charges—identification plate—application—fee—publicly owned special mobile equipment. (1) A person, firm, partnership, or corporation who owns, leases, or rents special mobile equipment as defined in section 53-642 and occasionally moves that equipment on, over, or across the highways of the state, is not subject to registration of that equipment or required to pay the fees and charges provided for in chapters 32 through 35 of Title 32. Prior to movement on the highways, however, each piece of equipment shall display an equipment identification plate or a dealers' license plate attached to the equipment.

(2) Annual application for the identification plate shall be made to the county treasurer before any piece of equipment is moved on the highways. Application shall be made on a form furnished by the department of justice, together with the payment of a fee of five dollars (\$5). The equipment for which a special mobile equipment plate is sought, is subject to the assessment of personal property taxes on the date application is made for the plate. The personal property taxes assessed against the special mobile equipment must be paid before the issuance of a special mobile equipment plate. The fees collected under this section belong to the county road fund.

(3) The identification plate expires on December 31 of each year.

(4) Publicly owned special mobile equipment, and implements of husbandry used exclusively by an owner in the conduct of his own farming operations, are exempt from this section.

History: En. Sec. 7-207, Ch. 197, L. 1965; amd. Sec. 1, Ch. 232, L. 1967; amd. Sec. 1, Ch. 244, L. 1971; Sec. 32-3707, R. C. M. 1947; amd. and redes. 53-639.1 by Sec. 124, Ch. 316, L. 1974; amd. Sec. 3, Ch. 388, L. 1975.

Amendments

The 1967 amendment inserted the third and fourth sentences of subsection (2), in the form of a proviso; changed the expiration date in subsection (3) from December 31 to March 31; and made a minor change in style.

The 1971 amendment inserted "or a dealers' license plate" near the end of subsection (1).

The 1974 amendment renumbered this section; substituted "department of justice" in subsection (2) for "registrar of motor vehicles"; and made minor changes in phraseology, punctuation and style.

The 1975 amendment substituted "assessment of personal property taxes on the date application is made for the plate" for "assessment of personal property taxes either on the date application is made for the plate, if that date falls between the first day of January and the first Monday of March, or on the first Monday of March" in subsection (2); and changed the expiration date in subsection (3) from March 31 to December 31.

53-639.2. Exemptions of vehicles not capable of operation on highways. Track-type tractors, other track mounted machinery and equipment, road rollers, and other similar equipment and machinery which cannot be self-propelled or towed upon the highways of this state and which must be transported by some type of hauling unit, are not subject to this title or chapters 32 and 33 of Title 32.

History: En. Sec. 3, Ch. 150, L. 1963; Sec. 53-638.1, R. C. M. 1947; amd. and redes. 53-639.2 by Sec. 187, Ch. 316, L. 1974.

Amendments

The 1974 amendment renumbered this

section; substituted "this title or chapter 32 and 33 of Title 32" at the end of the section for "any of the terms and provisions of Title 53, R. C. M. 1947"; and made minor changes in phraseology.

53-640. Issuance of identification plate and receipt—contents. The county treasurer shall issue to an applicant for an equipment identification plate a single metal plate with a distinguishing number and a receipt for the fee collected, which receipt shall contain the name and address of the applicant, the number of the plate issued, the serial number of the equipment and a brief description of that equipment.

History: En. Sec. 2, Ch. 183, L. 1955; amd. Sec. 188, Ch. 316, L. 1974.

Amendments

The 1974 amendment inserted "for an

equipment identification plate" after "applicant"; and made minor changes in phraseology.

53-642. "Special mobile equipment" defined. "Special mobile equipment" means every vehicle which is not designed and used primarily for the transportation of persons or property on a public highway and which is operated or moved over the highway from construction project to construction project, and not removed from the confines and haul roads thereof, except for movement from construction project to storage yard, from storage yard to construction project, or from storage yard or construction project to point of repair or maintenance and return. Special

mobile equipment includes, but is not limited to portable air compressors, air drills, asphalt spreaders, gravel crushing equipment and hot plant equipment, buckets, belt and front-end loaders, track laying tractors, ditchers, leveling graders, finishing machines, motor graders, paving mixers, earth moving scrapers and carry-alls, lighting, generating and power plants, welders, pumps, power shovels and draglines, cranes, crane mounted heel-boom log loaders, fork-lift trucks, lumber carriers, bunk-houses, tool houses, shop cars, oil distributors, scales and scale houses, and conveyors. It also includes self-propelled tractor-drawn earth moving equipment, dump trucks and tractor-dump trailer combinations which, because of excess width, height, length, or unladen weight, cannot be moved over a public highway without a permit as provided in sections 32-1127.1 through 32-1127.10, and which are operated unladen except within the boundaries of the project limits, as defined by the contract, and adjacent haul roads. However, the term "special mobile equipment" does not include a vehicle such as a truck, truck-tractor, trailer, semi-trailer, house trailer, or house car, designed for the transportation of persons or property.

History: En. Sec. 4, Ch. 183, L. 1955; amd. Sec. 2, Ch. 150, L. 1963; amd. Sec. 189, Ch. 316, L. 1974.

Amendments

The 1963 amendment substantially re-

wrote this section. For previous version, see parent volume.

The 1974 amendment substituted "as provided in section 32-1127.1 through 32-1127.10" in the third sentence for "section 32-1127, R. C. M. 1947"; and made minor changes in phraseology.

53-643. Repealed.

Repeal

This section (Sec. 5, Ch. 183, L. 1955), relating to identification plates for special

mobile equipment, was repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

53-644. Camper—definition. The term camper as used in this act includes but is not limited to truck camper, chassis mounted camper, cab over, half cab over, non cab over, telescopic, and telescopic cab over, but does not include a truck canopy cover or topper weighing less than 300 pounds and having no accommodations attached.

History: En. Sec. 1, Ch. 414, L. 1973; amd. Sec. 1, Ch. 112, L. 1977.

Title of Act

An act requiring each camper to be registered and to display identifying number and decal; charging each camper owner a one dollar (\$1) fee for registration of each camper; amending section 84-406, R. C. M. 1947; and providing an effective date and penalty.

Amendments

The 1977 amendment deleted "topper" before "telescopic, and telescopic cab over"; and added "but does not include a truck canopy cover or topper weighing less than 300 pounds and having no accommodations attached" to the end of the section.

53-645. Tax-paid decal required on camper—application for decal—fee—issuance. No camper, subject to taxation in Montana, shall be operated by any person in the state of Montana on the public highways or streets unless there is displayed in a conspicuous place thereon a decal as visual proof that Montana personal property taxes have been paid thereon for the current year. Application for the issuance of such

tax-paid decal shall be made to the department of revenue or the county treasurer upon forms to be furnished for this purpose, which may be obtained from the department or at the county assessor's office in the county wherein the owner resides, and is to provide for substantially the following information: name of owner, address, name of manufacturer, model number, make, year of manufacture, statement evidencing assessment, payment of property tax, and such other information as the department may require. Said application shall be signed by the county treasurer and transmitted by him to the department accompanied by a fee of one dollar (\$1). Upon receipt of the application in approved form the department or county treasurer shall issue to the applicant a decal in the style and design prescribed by the department and of a different color than the preceding year, numbered numerically.

History: En. Sec. 2, Ch. 414, L. 1973.

53-646. Violation as misdemeanor—fine. Operation of a camper in violation of this act is a misdemeanor punishable by a fine not to exceed fifty dollars (\$50).

History: En. Sec. 3, Ch. 414, L. 1973.

53-647. Annual application for decals. Application may be made to the department of revenue or county treasurer for the issuance of tax-paid decals annually when the motor vehicle to which the camper is customarily attached is registered.

History: En. Sec. 4, Ch. 414, L. 1973; amd. Sec. 1, Ch. 211, L. 1977.

Amendments

The 1977 amendment substituted "may be made" for "must be made"; added "when the motor vehicle to which the

camper is customarily attached is registered" to the first sentence; and deleted a former second sentence, which read: "Campers may be operated between January 1 and February 15 in each year without displaying the current year's decal."

CHAPTER 7—RECIPROCITY AND PROPORTIONAL REGISTRATION

- Section 53-701. Declaration of policy.
 53-702. Definitions.
 53-704. Authority of department of highways.
 53-705. Authority for reciprocity agreements, provisions, reciprocity standards.
 53-706. Base state registration reciprocity.
 53-707. Proportional registration of fleet vehicles.
 53-708. Declarations of extent of reciprocity.
 53-709. Extension of reciprocal privileges to lessees authorized.
 53-710. Automatic reciprocity.
 53-711. Proportional registration not exclusive.
 53-712. Proportional registration of fleet vehicles, application, fee-formula, and payment.
 53-713. Registration and identification of proportionally registered vehicles, effect of such registration.
 53-714. Proportional registration cannot be in a single jurisdiction.
 53-715. Registration of additional fleet vehicles.
 53-716. Withdrawal of fleet vehicles, credits and accounting.
 53-717. New fleet—estimated mileage.
 53-718. Fleet registration may be denied.
 53-719. Preservation of proportional registration records.
 53-720. Relation to other state laws.
 53-721. Suspension of reciprocity benefits.

- 53-722. Agreements to be written, filed and available for distribution.
 53-723. Reciprocity agreements in effect at time of act.
 53-724. Act part of and supplement to motor vehicle registration law.

53-701. Declaration of policy. It is the policy of this state to promote and encourage the fullest possible use of its highway system by authorizing the making and execution of motor vehicle reciprocal or proportional registration agreements, arrangements and declarations with other states, provinces, territories and countries with respect to vehicles registered in this and such other states, provinces, territories and countries thus contributing to the economic and social development and growth of this state.

History: En. Sec. 1, Ch. 206, L. 1963.

Title of Act

An act relating to motor vehicles; creating, amending and repealing laws on motor vehicle reciprocal or proportional registration agreements, arrangements and declarations with other states, provinces, territories and countries, so as to conform substantially with the model reciprocity and proration draft proposed by the national committee on uniform traffic laws

and ordinances; providing a declaration of policy, definitions, creation of Montana motor vehicle reciprocity board, and authority of said board; and providing other related sections for carrying out the policy, construction and administration of this act; providing a severability clause; amending section 53-129, R.C.M., 1947, as amended; repealing section 53-625, R.C.M., 1947, as amended; providing an effective date.

53-702. Definitions. As used in this act:

(1) "Commercial vehicle" means a vehicle which is operated in more than one (1) state and used for the transportation of persons for hire, compensation or profit, or designed or used primarily for the transportation of property.

(2) "Jurisdiction" means and includes a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a foreign country and a state or province of a foreign country.

(3) "Owner" means a person who holds the legal title to a vehicle, or in the event a vehicle is the subject of an agreement for the conditional sale thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee, or in the event a vehicle is subject to a lease, contract or other legal arrangement vesting right of possession or control, for security or otherwise, or in the event a mortgagor of a vehicle is entitled to possession, then the owner shall be deemed to be such person in whom is vested right of possession or control.

(4) "Legal residence," means a jurisdiction where the person lives or conducts his business. This residence need not be coupled with the intent to live or conduct the business there on a permanent basis. The use of the word "residence" in this act shall be confined to the definition given, and shall not be confused with the word "domicile." This definition of "residence" further recognizes that a person may have several residences, but only one (1) domicile.

(5) (a) "Properly registered," as applied to place of registration means:

(i) The jurisdiction where the person registering the vehicle has his legal residence, or

(ii) In the case of a commercial vehicle, the jurisdiction in which it is registered if the commercial enterprise in which the vehicle is used has a place of business therein and, if the vehicle is most frequently dispatched, garaged, serviced, maintained, operated or otherwise controlled in or from the place of business and, the vehicle has been assigned to the place of business, or

(iii) In the case of a commercial vehicle, the jurisdiction where, because of an agreement or arrangement between two (2) or more jurisdictions, or pursuant to a declaration, the vehicle has been registered as required by that jurisdiction.

(b) In case of doubt or dispute as to the proper place of registration of a vehicle, the board of highway appeals shall make the final determination, but in making the determination, the board may confer with departments of the other jurisdictions affected.

(6) "Fleet" means two (2) or more commercial vehicles.

(7) "Person," for purposes of this act, means every natural person, firm, copartnership, association, or corporation.

(8) "Motor vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

(9) "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

(10) "Preceding year" means a period of twelve (12) consecutive months fixed by the department of highways, which period shall be within sixteen (16) months immediately preceding the commencement of the registration or license year for which proportional registration is sought; the department in fixing the period shall make it conform to the terms, conditions and requirements of any applicable agreement or arrangements for the proportional registration of vehicles.

History: En. Sec. 2, Ch. 206, L. 1963; amd. Sec. 190, Ch. 316, L. 1974.

Amendments

The 1974 amendment substituted "board of highway appeals" in subdivision (5)(b)

for "Montana motor vehicle reciprocity board"; substituted "department of highways" and "department" in subsection (10) for "Montana motor vehicle reciprocity board"; and made minor changes in phraseology and style.

53-703. Repealed.

Repeal

Section 53-703 (Sec. 3, Ch. 206, L. 1963; Sec. 17, Ch. 391, L. 1973), relating to

creation of the Montana motor vehicle reciprocity board, was repealed by Sec. 209, Ch. 316, Laws of 1974.

53-704. Authority of department of highways. The department of highways may execute or make arrangements, agreements or declarations to carry out this chapter.

History: En. Sec. 4, Ch. 206, L. 1963; amd. Sec. 191, Ch. 316, L. 1974.

partment of highways" for "Montana motor vehicle reciprocity board" and "this chapter" for "this act."

Amendments

The 1974 amendment substituted "de-

53-705. Authority for reciprocity agreements, provisions, reciprocity standards. The department may enter into an agreement or arrangement with the duly authorized representatives of other jurisdictions, granting to vehicles or to owners of vehicles which are properly registered or licensed in those jurisdictions, and for which evidence of compliance is supplied, benefits, privileges and exemptions from payment, wholly or partially, of any taxes, fees, or other charges imposed upon those vehicles or owners with respect to the operation or ownership of the vehicles under the laws of this state. The agreement or arrangement shall provide that vehicles properly registered or licensed in this state, when operated upon highways of those other jurisdictions, shall receive exemptions, benefits and privileges of a similar kind or to a similar degree as are extended to vehicles properly registered or licensed in the jurisdiction when operated in this state. The agreement or arrangement shall, in the judgment of the department, be in the best interests and fair and equitable to this state and its citizens determined on the basis and recognition of the benefits which accrue to the economy of this state from the uninterrupted flow of commerce.

History: En. Sec. 5, Ch. 206, L. 1963; amd. Sec. 192, Ch. 316, L. 1974.

partment" for "Montana motor vehicle reciprocity board" in the first and last sentences; and made minor changes in phraseology.

Amendments

The 1974 amendment substituted "de-

53-706. Base state registration reciprocity. An agreement or arrangement entered into, or a declaration issued under the authority of this act may contain provisions authorizing the registration or licensing in another jurisdiction of vehicles located in or operated from a base in such other jurisdiction which vehicles otherwise would be required to be registered or licensed in this state; and in such event the exemptions, benefits and privileges extended by such agreement, arrangement or declaration shall apply to such vehicles, when properly licensed or registered in such base jurisdiction.

History: En. Sec. 6, Ch. 206, L. 1963.

53-707. Proportional registration of fleet vehicles. If a jurisdiction permits or requires the licensing of fleets of vehicles in interstate or combined interstate and intrastate commerce and payment of registration fees, license fees, taxes or other fixed fees on those vehicles on an apportionment basis commensurate with and determined by the miles traveled on and the use made of the jurisdiction's highways, as compared with the miles traveled on and the use made of other jurisdiction's highways or any other equitable basis of apportionment, and exempts vehicles registered in any other jurisdiction under this apportionment basis from the requirements of full payment of its own registration, license fees, taxes

or other fixed fees, then the department may, by agreement, adopt such exemption with respect to vehicles of these fleets, whether owned by residents or nonresidents of this state and regardless of where based. An agreement, under the terms, conditions or restrictions the department considers proper, may provide that owners of vehicles operated in interstate or combined interstate and intrastate commerce in this state be permitted to pay registration, license fees, taxes or other fixed fees on an apportionment basis, commensurate with and determined by the miles traveled on and the use made of the highways of this state as compared with the use made of the highways of other jurisdictions or any other equitable basis of apportionment. This agreement may not authorize, nor be construed to authorize a vehicle so registered to be operated in intrastate commerce in this state unless the owner of the vehicle has been granted intrastate authority or rights by the public service commission, if a grant is otherwise required by law. The department may adopt rules it considers necessary to carry out and administer this section, and the registration of fleet vehicles under this chapter is subject to the rights, terms and conditions granted by or contained in any applicable agreement, arrangement or declaration made by the department.

History: En. Sec. 7, Ch. 206, L. 1963; amd. Sec. 1, Ch. 88, L. 1965; amd. Sec. 193, Ch. 316, L. 1974.

Amendments

The 1965 amendment substituted "license fees, taxes" for "license taxes" near the beginning of the section and "license fees, taxes" for "license" following "registration" in two places.

The 1974 amendment substituted "de-

partment" for "Montana motor vehicle reciprocity board" throughout the section; substituted "public service commission" for "Montana railroad and public service commission" in the third sentence; substituted "this section" for "this subsection" in the last sentence; substituted "this chapter" for "this act" in the last sentence; and made minor changes in phraseology and punctuation.

53-708. Declarations of extent of reciprocity. In the absence of an agreement or arrangement with another jurisdiction, the department may examine the laws and requirements of the jurisdiction and declare the extent and nature of exemptions, benefits, and privileges to be extended to vehicles properly registered or licensed in the other jurisdiction, or to the owners of the vehicles, which are, in the judgment of the department in the best interests and fair and equitable to this state and its citizens determined on the basis and recognition of the benefits which accrue to the economy of this state from the uninterrupted flow of commerce.

History: En. Sec. 8, Ch. 206, L. 1963; amd. Sec. 194, Ch. 316, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "Montana motor vehicle reciprocity board"; and made minor changes in phraseology and punctuation.

53-709. Extension of reciprocal privileges to lessees authorized. An agreement or arrangement entered into, or a declaration issued under the authority of this act, may contain provisions under which a leased vehicle properly registered by the lessor thereof may be entitled, subject to terms

and conditions stated therein, to the exemptions, benefits and privileges extended by such agreement, arrangement or declaration.

History: En. Sec. 9, Ch. 206, L. 1963.

53-710. Automatic reciprocity. On and after the effective date of this act, if no agreement, arrangement or declaration is in effect with respect to another jurisdiction as authorized by this act, any vehicle properly registered or licensed in such other jurisdiction, and for which evidence of compliance is supplied, shall receive, when operated in this state, the same exemptions, benefits and privileges granted by such other jurisdictions to vehicles properly registered in this state. Reciprocity extended under this subsection shall apply to commercial vehicles only when engaged exclusively in interstate commerce.

History: En. Sec. 10, Ch. 206, L. 1963.

53-711. Proportional registration not exclusive. Nothing contained in this act relating to proportional registration of fleet vehicles shall be construed as requiring any vehicle to be proportionally registered if it is otherwise registered in this state for the operation in which it is engaged, including but not by way of limitation, regular registration, temporary registration, or trip permit or registration.

History: En. Sec. 11, Ch. 206, L. 1963.

53-712. Proportional registration of fleet vehicles, application, fee-formula, and payment. (1) An owner engaged in operating one or more fleets may, instead of registration of vehicles under other sections of this title, register and license each fleet for operation in this state by filing an application with the department which shall contain the following information, and any other information pertinent to vehicle registration the department requires:

(a) total fleet miles which is the total number of miles operated in all jurisdictions during the preceding year by the vehicles in the fleet during the year;

(b) in-state miles which is the total number of miles operated in this state during the preceding year by the vehicles in the fleet during the year; and

(c) a description and identification of each vehicle of the fleet which is to be operated in this state during the registration year for which proportional fleet registration is requested.

(2) The application for each fleet may be accompanied by a fee payment computed as follows:

(a) Divide in-state miles by total fleet miles.

(b) Determine the total amount necessary to register each vehicle in the fleet for which registration is requested, based on the regular annual registration fees prescribed by 53-122 and Title 32, chapters 32 and 33, and the property taxes which are due on the fleet.

(c) Multiply the sum obtained under subsection (2)(b) by the fraction obtained under subsection (2)(a).

(3) Applications submitted with fees shall be recomputed by the department and a statement furnished showing the overpayment or balance due.

(4) Applications submitted without fees shall be computed by the department and a statement furnished showing the amount of fees due.

History: En. Sec. 12, Ch. 206, L. 1963; amd. Sec. 2, Ch. 88, L. 1965; amd. Sec. 195, Ch. 316, L. 1974; amd. Sec. 1, Ch. 144, L. 1977.

Amendments

The 1965 amendment added "and such property taxes if any be due thereon" at the end of paragraph (2) (b).

The 1974 amendment substituted "department" for "Montana highway commission" in the first paragraph; substituted

"prescribed by section 53-122, Title 32, chapter 32 and chapter 33" in subdivision (2)(b) for "prescribed by section 53-122, R. C. M., 1947, as amended, and section 53-615, R. C. M., 1947, as amended"; and made minor changes in phraseology and punctuation.

The 1977 amendment substituted "may" for "shall" in subsection (2); added subsections (3) and (4); and made minor changes in phraseology, punctuation and style.

53-713. Registration and identification of proportionally registered vehicles, effect of such registration. (1) The department shall register the vehicles so described and issue a license plate or plates, or a distinctive sticker, or other suitable identification device, for each vehicle described in the application upon payment of the appropriate fees, and property taxes as provided by law, for the application and for the stickers or devices issued. A fee of two dollars (\$2) shall be paid for each license plate, sticker or device issued for each proportionally registered vehicle. A registration card shall be issued for each proportionally registered vehicle. The registration card shall, in addition to other information required by Title 53, bear upon its face the number of the license, sticker or other device issued for the proportionally registered vehicle and shall be carried in the vehicle at all times.

(2) Fleet vehicles so registered and identified shall be deemed fully licensed and registered in this state for any type of movement or operation, except that, in those instances in which a grant of authority is required for intrastate movement or operation, the vehicle may not be operated in intrastate commerce in this state unless the owner has been granted intrastate authority by the public service commission and unless the vehicle is being operated in conformity with that authority.

History: En. Sec. 13, Ch. 206, L. 1963; amd. Sec. 3, Ch. 88, L. 1965; amd. Sec. 196, Ch. 316, L. 1974.

Amendments

The 1965 amendment inserted "and property taxes as provided by law" in the first sentence of subsection (1).

The 1974 amendment substituted "department" in subsection (1) for "Montana highway commission"; substituted "public

service commission" in subsection (2) for "Montana railroad and public service commission"; and made minor changes in phraseology.

Effective Date

Section 4 of Ch. 88, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 26, 1965.

53-714. Proportional registration cannot be in a single jurisdiction. The right to the privilege and benefits of proportional registration of fleet vehicles extended by this act, or by any contract, agreement, arrangement or declaration made under the authority of this act, shall be subject

to the condition that each fleet vehicle proportionally registered under the authority of this act shall also be proportionally or otherwise properly registered in at least one other jurisdiction during the period for which it is proportionally registered in this state.

History: En. Sec. 14, Ch. 206, L. 1963.

53-715. Registration of additional fleet vehicles. Vehicles acquired by the owner after the commencement of the registration year and subsequently added to a proportionally registered fleet shall be proportionally registered by applying the mileage percentage used in the original application for such fleet for such registration period to the regular registration fees due with respect to such vehicle for the remainder of the registration year.

History: En. Sec. 15, Ch. 206, L. 1963.

53-716. Withdrawal of fleet vehicles, credits and accounting. If a vehicle is withdrawn from a proportionally registered fleet during the period for which it is registered, the owner of the fleet shall notify the department of that fact on forms prescribed by the department. The department may require the owner to surrender proportional registration cards and other identification devices which have been issued with respect to that vehicle. If a vehicle is permanently withdrawn from a proportionally registered fleet because it has been destroyed, sold or otherwise completely removed from the service of the registrant, the unused portion of the gross vehicle weight fees paid with respect to that vehicle shall be credited to the proportional registration account of the owner. This unused portion shall equal the amount paid with respect to the vehicle when it was first proportionally registered in the registration year, reduced by $\frac{1}{12}$ of the total annual gross vehicle weight fee of the vehicle for each calendar month and fraction thereof elapsing between the first day of the month of the current year in which the vehicle was registered and the date the notice of withdrawal is received by the department. This credit shall be applied against liability for subsequent additions to be prorated during the registration year or for additional fees due upon audit under section 53-719. If a credit is less than five dollars (\$5.00), it may not be made or entered. In no event may the amount be credited against fees other than those for the registration year, nor may any amount be subject to refund.

History: En. Sec. 16, Ch. 206, L. 1963; amd. Sec. 197, Ch. 316, L. 1974.

Amendments

The 1974 amendment substituted "notify the department of that fact on forms prescribed by the department" in the first sentence for "notify the Montana highway

commission on appropriate forms to be prescribed by the Montana motor vehicle reciprocity board"; substituted "department" in the second and fourth sentences for "Montana highway commission"; and made minor changes in phraseology, punctuation and style.

53-717. New fleet—estimated mileage. The initial application for proportional registration of a fleet shall state the mileage data with respect to the fleet for the preceding year in this and other jurisdictions. If operations were not conducted with this fleet during the preceding

year, the application shall contain a full statement of the proposed method of operation and estimates of annual mileage in this state and other jurisdictions. The department shall determine the in-state and total fleet miles to be used in computing the fee payment for the fleet. The department may evaluate and adjust the estimate in the application if it is not satisfied as to the correctness of the estimate.

History: En. Sec. 17, Ch. 206, L. 1963; amd. Sec. 198, Ch. 316, L. 1974.

Amendments The 1974 amendment substituted "de-
partment" in the third and fourth sentences for "Montana highway commission"; and made minor changes in phraseology.

53-718. Fleet registration may be denied. The department may refuse to accept proportional registration applications for the registration of vehicles based in, or owned by residents of, another jurisdiction if the department finds that the other jurisdiction does not grant similar registration privileges to fleet vehicles based in or owned by residents of this state.

History: En. Sec. 18, Ch. 206, L. 1963; amd. Sec. 199, Ch. 316, L. 1974.

Amendments The 1974 amendment substituted "department" for "Montana highway com-
mission" at the beginning of the section; substituted "if the department finds" for "if the Montana motor vehicle reciprocity board finds" near the middle of the section; and made a minor change in phraseology.

53-719. Preservation of proportional registration records. An owner whose application for proportional registration has been accepted shall preserve the records on which the application is based for a period of four (4) years following the year or period upon which the application is based. Upon request of the department, the owner shall make these records available to the department for audit as to accuracy of computations and payments, or pay the reasonable costs of an audit at the owner's home office by an appointed representative of the department. The department may make arrangements with agencies of other jurisdictions administering motor vehicle registration laws for joint audits of the owner.

History: En. Sec. 19, Ch. 206, L. 1963; amd. Sec. 200, Ch. 316, L. 1974.

Amendments The 1974 amendment substituted "de-
ment" for "Montana highway commission" throughout the section; and made minor changes in phraseology.

53-720. Relation to other state laws. The provisions of this act shall constitute complete authority for the registration of fleet vehicles upon a proportional registration basis without reference to or application of any other statutes of this state except as in this section expressly provided.

History: En. Sec. 20, Ch. 206, L. 1963.

53-721. Suspension of reciprocity benefits. Agreements, arrangements or declarations made under this chapter may include provisions authorizing the department to suspend or cancel the exemptions, benefits or privileges granted thereunder to a person who violates any of the conditions or terms of the agreements, arrangements or declarations or who

violates the laws of this state relating to motor vehicles, or rules lawfully adopted thereunder.

History: En. Sec. 21, Ch. 206, L. 1963; amd. Sec. 201, Ch. 316, L. 1974.

Amendments

The 1974 amendment substituted "this

chapter" for "this act"; substituted "department" for "Montana highway commission"; and made minor changes in phraseology.

53-722. Agreements to be written, filed and available for distribution. All agreements, arrangements or declarations or amendments thereto shall be in writing and shall be filed with the department, and the department shall provide copies for public distribution upon request.

History: En. Sec. 22, Ch. 206, L. 1963; amd. Sec. 202, Ch. 316, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "secretary of the Montana motor vehicle reciprocity board" and made minor changes in phraseology.

53-723. Reciprocity agreements in effect at time of act. All reciprocity and proportional registration agreements, arrangements and declarations relating to vehicles, in force and effect at the time this act becomes effective, shall continue in force and effect until specifically amended or revoked as provided by law or by such agreements or arrangements.

History: En. Sec. 23, Ch. 206, L. 1963.

53-724. Act part of and supplement to motor vehicle registration law. This act is supplemental to the motor vehicle registration law of this state.

History: En. Sec. 24, Ch. 206, L. 1963; amd. Sec. 203, Ch. 316, L. 1974.

Amendments

The 1974 amendment deleted a clause making this act part of Title 53 and made minor changes in phraseology.

Separability Clause

Section 25 of Ch. 206, Laws 1963 read "Severability. If any phrase, clause, subsection or section of this act shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that the legislature would have enacted this act with-

out the phrase, clause, subsection or section so held unconstitutional or invalid and the remainder of the act shall not be affected as a result of said part being held unconstitutional or invalid."

Repealing Clause

Section 27 of Ch. 206, Laws 1963 read "Section 53-625, R.C.M., 1947, as amended, is repealed."

Effective Date

Section 28 of Ch. 206, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 7, 1963.

CHAPTER 8—MARKINGS ON TRUCKS AND HEAVY VEHICLES

Section 53-801. Owner's name and certificate number to be displayed on heavy vehicles—specifications.

53-802. Dealers and manufacturers exempt.

53-803. Penalty for violations.

53-801. Owner's name and certificate number to be displayed on heavy vehicles—specifications. No motor vehicle or combination of vehicles, except farm vehicles, having a gross weight of more than 10,000 pounds shall operate upon the highways of the state of Montana unless there shall be dis-

played on both sides of each vehicle operated under its own power, either alone or in combination, the name, or trade name and address or M.R.C. or I.C.C. certificate number of the person or corporation under whose jurisdiction the vehicle, or vehicles, is or are being operated.

The display of name must be in letters in sharp contrast to the background and size, shape, and color readily legible in daylight from a distance of fifty (50) feet while the vehicle is not in motion, and such display shall be kept and maintained in such manner as to remain so legible. The display may be accomplished either by painting the information on the vehicle or through the use of a decal or a removable device, so prepared as to otherwise meet the identification and legibility requirements of this act.

History: En. Sec. 1, Ch. 133, L. 1963. motor vehicles operating on the highways of the state of Montana, providing a penalty and providing an effective date.

Title of Act

An act to provide for the marking of

53-802. Dealers and manufacturers exempt. This act shall not apply to motor vehicles being transported to dealers, from point of manufacture, or from one dealer to another, or when being demonstrated to a prospect, or delivered to a buyer from a dealer or a manufacturer.

History: En. Sec. 2, Ch. 133, L. 1963.

53-803. Penalty for violations. Any person convicted of violating this act shall be guilty of a misdemeanor and shall be punished for each offense by a fine of not more than one hundred dollars (\$100) or by imprisonment for not more than one (1) month, or both.

History: En. Sec. 3, Ch. 133, L. 1963. **Effective Date**

Section 4 of Ch. 133 read "The effective date of this act is July 1, 1963."

CHAPTER 9—REMOVAL AND SALE OF ABANDONED VEHICLES

Section 53-901. Prohibition against parking or leaving vehicles on public or private property.

53-902. Taking vehicle into custody.

53-903. Notice to owner.

53-904. Reclaiming vehicle.

53-905. Sale of vehicle if not reclaimed.

53-906. Certificate of sale.

53-907. Issuing certificate of ownership.

53-908. Transmitting return of sale and balance of proceeds.

53-909. Penalty for violation and enforcement of provisions.

53-901. Prohibition against parking or leaving vehicles on public or private property. No vehicle shall be parked or left standing upon the right of way of any public highway for a period longer than forty-eight (48) hours, or upon a city street, any state, county or city property for a period longer than five (5) days.

History: En. Sec. 1, Ch. 288, L. 1967; amd. Sec. 1, Ch. 169, L. 1969.

Amendments

The 1969 amendment inserted "for a period longer than forty-eight (48) hours" after "public highway" and made minor changes in phraseology.

Title of Act

An act to provide for the removal and disposal of abandoned motor vehicles and for related purposes.

53-902. Taking vehicle into custody. (1) The following law enforcement agencies may take into custody any motor vehicle found abandoned for a period of forty-eight (48) hours or more on any public highway, or for a period of five (5) days or more on any city street, or public property.

(a) The Montana highway patrol if the vehicle is upon the right of way of any public highway other than county road.

(b) The sheriff of the county if the vehicle is upon the right of way of any county road or private property within the county.

(c) The city police if the vehicle is upon a city street within the city.

(2) The Montana highway patrol, sheriff of the county, or the city police may use its, or his personnel, equipment and facilities for the removal and preservation of the vehicle, or may hire other personnel, equipment and facilities for those purposes.

History: En. Sec. 2, Ch. 288, L. 1967; amd. Sec. 2, Ch. 169, L. 1969.

sentence of subsection (1) to reduce the abandonment period for vehicles found on public highways from five days to forty-eight hours.

Amendments

The 1969 amendment revised the first

53-903. Notice to owner. (1) Within seventy-two (72) hours after any vehicle is removed and held by or at the direction of the Montana highway patrol or the city police, they shall notify the sheriff of the county in which the vehicle was located at the time it was taken into custody and the place where the vehicle is being held. In addition the Montana highway patrol or the city police shall furnish the sheriff a complete description of the vehicle to include year, make, model, serial number and license number, if available, any costs incurred to that date in the removal, preservation and custody of the vehicle, and any available information concerning its ownership.

(2) The sheriff shall make reasonable efforts to ascertain the name and address of the owner, lien holder, or person entitled to possession of the vehicle. If such name and address are ascertained, the sheriff shall notify such owner and lien holder or person of the location of the vehicle.

(a) If the vehicle is registered in the office of the registrar of motor vehicles of this state, notice shall be deemed given when a registered or certified letter addressed to the registered owner of the vehicle and lien holder, if any, at the latest address shown by the records in the office of the registrar, return receipt requested and postage prepaid thereon, is mailed at least thirty (30) days before the vehicle is sold as hereinafter provided.

(b) If the identity of the last registered owner cannot be determined, or if the registration contains no address for the owner; or if it is impossible to determine with reasonable certainty the identity and addresses of all lien holders, notice by one (1) publication in one (1) newspaper of general circulation in the county where the motor vehicle was abandoned shall be sufficient to meet all requirements of notice pursuant to this act. Such notice by publication can contain multiple listings of abandoned vehicles. Any such notice shall be within the time require-

ments prescribed for notice by certified or registered mail and shall have the same contents required for a notice by certified or registered mail.

(3) A vehicle found by law enforcement officials to be a "junk vehicle" as defined by section 69-6801 and certified as having an appraised value of one hundred dollars (\$100) or less as determined by the county assessor in accordance with the rules and regulations of the department of revenue may be directly submitted for disposal in accordance with the provisions of chapter 69-68, upon a release given by the sheriff. In the release the sheriff shall include the following information: a description of the vehicle including year, make, model, serial number, and license number if available. A release provided by the sheriff under this section shall be transmitted to the motor vehicle wrecking facility and shall be considered by that facility to meet the requirements for records under section 69-6804. Vehicles described in this section may be submitted without notice and without a required holding period.

History: En. Sec. 3, Ch. 288, L. 1967; Amendments
amd. Sec. 1, Ch. 53, L. 1974.

The 1974 amendment added subdivision (3).

53-904. Reclaiming vehicle. The owner, lien holder, or person entitled to possession of the vehicle may reclaim it at any time after it is taken into custody and before it is sold. He shall present to the sheriff of the county in which the vehicle was located at the time it was taken into custody, satisfactory proof of ownership or right to possession, and pay the costs and expenses incurred in the removal, preservation and custody of the vehicle. He shall not be required to pay storage charges for a period longer than ninety (90) days.

History: En. Sec. 4, Ch. 288, L. 1967.

53-905. Sale of vehicle if not reclaimed. (1) If a vehicle is not reclaimed as provided in the preceding section within thirty (30) days after notification by registered or certified mail or prescribed publication, the sheriff of the county in which it is located at the time it was taken into custody, shall sell it at public auction in the manner provided in sections 93-5824 through 93-5832 of the Revised Codes of Montana, 1947.

(2) After any vehicle has been so sold, the former owner or person entitled to possession has no further right, title, claim or interest in or to the vehicle.

History: En. Sec. 5, Ch. 288, L. 1967.

53-906. Certificate of sale. (1) When any vehicle is so sold, the sheriff at the time of the payment of the purchase price, shall execute a certificate of sale in duplicate. He shall deliver the original certificate to the purchaser and retain the copy.

(2) The certificate of sale shall contain the name and address of the purchaser, the date of sale, the consideration paid, a description of the vehicle and a stipulation that no warranty is made as to the condition or title of the vehicle.

History: En. Sec. 6, Ch. 288, L. 1967.

53-907. Issuing certificate of ownership. The registrar of motor vehicles shall issue a certificate of ownership upon presentation by the purchaser of the certificate of sale and payment of the fees required by law.

History: En. Sec. 7, Ch. 288, L. 1967.

53-908. Transmitting return of sale and balance of proceeds. (1) When any vehicle is sold as provided in section 5 [53-905], the sheriff shall transmit to the registrar of motor vehicles and to the county treasurer a return of sale setting forth a description of the vehicle, the purchase price, the name and address of the purchaser, the costs incurred in the sale and the costs and expenses incurred in the removal, preservation and custody of the vehicle.

(2) With the return of sale, the sheriff shall transmit to the county treasurer the balance of the proceeds of the sale after deducting the costs incurred in the sale, and the costs and expenses incurred in the removal, preservation and custody of the vehicle.

(3) Upon receipt of the return of sale and such balance the county treasurer shall file the return in his office and deposit the balance in the county road fund on all vehicles seized by the sheriff or highway patrol. The county treasurer shall transmit to the city treasurer the balance of the proceeds of the sale after deducting the costs incurred in the sale and the costs and expenses incurred in the removal, preservation and custody of vehicles seized by city police, and the city treasurer shall deposit such proceeds in the city street fund.

History: En. Sec. 8, Ch. 288, L. 1967.

53-909. Penalty for violation and enforcement of provisions. Any person or persons violating the provisions of this act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five dollars (\$25), nor more than three hundred dollars (\$300), or by imprisonment in the county jail for not less than five (5) days, nor more than ninety (90) days, or by both fine and imprisonment.

History: En. Sec. 9, Ch. 288, L. 1967.

Separability Clause

Section 10 of Ch. 288, Laws 1967 read "The provisions of this act shall be severable and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitutional

or void, the remainder of this act shall continue in full force and effect."

Effective Date

Section 11 of Ch. 288, Laws 1967 read "This act shall become effective from and after the 1st day of July, 1967."

CHAPTER 10—SNOWMOBILES

Section 53-1012. Definition of terms.

53-1013. Certificate of ownership.

53-1013.1. Registration of snowmobiles bought from dealers—grace period.

53-1014. Transfer of interest.

53-1015. Lost or mutilated certificates.

53-1016. Exemptions.

53-1016.1. Nonresident temporary-use permits.

53-1017. Report of stolen and recovered snowmobiles.

53-1018. Operation on public roads and streets.

53-1019. Unlawful operation on streets and highways.

53-1020. Other unlawful operation.

53-1021. Accidents involving snowmobiles.

- 53-1022. Enforcement.
- 53-1023. Penalties.
- 53-1025. Display of tax-paid decals on snowmobiles required—application and issuance.
- 53-1025.1. Duplicate decal.
- 53-1026. Application to be made annually—grace period—proof of purchase.
- 53-1027. Failure to display decal a misdemeanor—penalty.
- 53-1028. Officers authorized to enforce chapter.
- 53-1029. Issuance of dealer registration certificate.

53-1001 to 53-1011. Repealed.

Repeal

Sections 53-1001 to 53-1011 (Secs. 1 to 11, Ch. 326, L. 1969), relating to snow-

mobiles, were repealed by Sec. 13, Ch. 434, Laws 1971.

53-1012. Definitions of terms. As used in this chapter, the following terms shall have the meanings indicated herein, unless the context otherwise clearly requires that another meaning is intended:

(1) “Person” includes an individual, partnership, association, corporation, and any other body or group of persons, whether incorporated or not, and regardless of the degree of formal organization.

(2) “Snowmobile” includes any self-propelled vehicle of an overall width of 48 inches or less excluding accessories designed primarily for travel on snow or ice, which may be steered by skis or runners and which is not otherwise registered or licensed under the laws of the state of Montana.

(3) “Owner” includes every person as defined herein, other than a lien holder or other person having a security interest only, holding a certificate of ownership to a snowmobile, and entitled to the use or possession thereof.

(4) “Operator” includes every person who operates or is in actual physical control of the operation of a snowmobile.

(5) “Roadway” includes only those portions of any highway, road, or street improved, designed, or ordinarily used for travel or parking of motor vehicles.

(6) “Department” means the department of fish and game of the state of Montana.

(7) “dbA” means sound pressure level measured on the “A” weight scale in decibels.

(8) “New snowmobile” means any snowmobile that has not been previously sold to an “owner” as defined in subsection (3).

History: En. Sec. 1, Ch. 434, L. 1971; amd. Sec. 1, Ch. 91, L. 1974; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 1, Ch. 421, L. 1977.

lishing enforcement, and providing penalties for any violation of this act; repealing sections 53-1001 through 53-1011, R.C.M., 1947.

Title of Act

An act establishing certificates of ownership and records of theft of snowmobiles, regulating operation of snowmobiles, providing exemptions, transfer of interest, prohibiting licensing and registration by political subdivisions, estab-

Amendments

The 1974 amendment added subdivisions (g) and (h).

The 1977 amendment redesignated former subdivisions (a) through (h) as subdivisions (1) through (8); inserted “of an overall width of 48 inches or less ex-

cluding accessories" in subdivision (2); deleted "or natural terrain" after "snow or ice" in subdivision (2); deleted "wheels" after "steered by" in subdivision (2); substituted "a certificate of ownership" in subdivision (3) for "record title"; and made minor changes in phraseology and punctuation.

53-1013. Certificate of ownership. (1) No snowmobile may be operated upon any public lands, trails, easements, lakes, rivers, streams, roadways or shoulders of roadways, streets or highways, unless a certificate of ownership has first been obtained from the registrar of motor vehicles in accordance with the laws of this state.

(2) Before such certificate may be obtained, the owner of a snowmobile shall make application for a certificate of ownership with the county treasurer of the county in which the owner resides, upon forms to be furnished for this purpose, which shall require the following information: name of owner, residence by town and county, business or home mail address, name and address of lien holder, amount due under contract or lien, name and address of manufacturer, model number or name, serial number, and name and address of dealer or other person from whom acquired. The application shall be signed by at least one owner or by a properly authorized officer or representative of the owner.

(3) If a certificate of ownership for a snowmobile has previously been issued under the provisions of this chapter, the application for a new certificate must be accompanied by the immediately previous certificate or by an affidavit upon a prescribed form stating under oath that the vehicle had not been operated during the immediately previous year. This subsection does not apply to snowmobiles that are purchased as new and unused machines or that were operated when the provisions of this chapter were not in force and effect.

(4) Upon completion of the application in quintuplicate on forms furnished by the registrar of motor vehicles, the county treasurer shall issue to the applicant two copies of the application, one of which shall be marked "file copy", and forward one copy and the original application to the registrar of motor vehicles, who shall cause to be entered the information contained in the application upon the corresponding records of his office, and shall furnish the applicant a certificate of ownership which shall contain the information found on the application and a permanent ownership number. The owner shall at all times retain possession of the certificate of ownership, except when the same is being transmitted to and from the registrar of motor vehicles for endorsement or cancellation. The certificate of ownership is not required to be renewed annually, and is valid as long as the person holding it owns the snowmobile. The owner of a snowmobile shall display his certificate of ownership number on both sides of the cowl of the snowmobile and shall maintain the number in legible condition at all times. The number shall read from left to right and be marked in Arabic numerals, in block characters of good proportion, and shall be a minimum of 3 inches in height, excluding border or trim, and of a color that contrasts with the color of the background.

(5) Upon application for a certificate of ownership, a fee of \$3 shall be paid to the county treasurer, one-half of which fee shall be forwarded by the county treasurer to the registrar of motor vehicles.

(6) Before a tax-paid decal may be applied for pursuant to the laws of this state, the owner must present the certificate of ownership, or copy of completed application therefor, as a prerequisite to completing the application for the tax-paid decal.

History: En. Sec. 2, Ch. 434, L. 1971; amd. Sec. 18, Ch. 391, L. 1973; amd. Sec. 1, Ch. 249, L. 1974; amd. Sec. 2, Ch. 421, L. 1977.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in subsection (1).

The 1974 amendment substituted "registrar of motor vehicles" in subsection (1) for "state department of revenue."

The 1977 amendment deleted "or, private" before "lands" near the beginning of subsection (1); substituted "unless a certificate of ownership has first been obtained from the registrar" in subsection (1) for "unless it has first been registered with the registrar"; substituted references to certificates for references to registration throughout the section; sub-

stituted "which shall require" in the first sentence of subsection (2) for "and to provide for substantially"; inserted "certificate of ownership for a" near the beginning of subsection (3); deleted "marked 'owner's certificate of registration'" after "copies of the application" in the first sentence of subsection (4); inserted "original" before "application" in the first sentence of subsection (4); substituted "application" after "found on the" near the end of the first sentence of subsection (4) for "registration"; added "and a permanent ownership number" to the first sentence of subsection (4); added the last three sentences of subsection (4); increased the fee from \$2 to \$3 in subsection (5); substituted "tax-paid decal" in subsection (6) for "registration decal"; and made minor changes in phraseology, punctuation and style.

53-1013.1. Registration of snowmobiles bought from dealers—grace period. (1) A purchaser of a new or used snowmobile from a licensed snowmobile dealer has a grace period of 20 calendar days from the date of purchase to make application for a certificate of ownership and a certificate of registration and to obtain a registration decal. It is not a violation of this chapter or any other law for the purchaser to operate such a snowmobile without a certificate of registration and a registration decal during the 20-day period. During this period the sticker, provided for in subsection (2), shall remain affixed to the snowmobile.

(2) Prior to the delivery of the snowmobile to the purchaser, the dealer shall issue and affix to the snowmobile a sticker (in a form to be prescribed by the registrar of motor vehicles). The sticker shall contain the name and address of the purchaser, the date of sale, the name and address of the dealer, and a description of the snowmobile, including its serial number. The dealer shall keep a copy of the sticker for his records and shall send a copy of the sticker to the registrar of motor vehicles.

History: En. 53-1013.1 by Sec. 1, Ch. 402, L. 1977.

Title of Act

An act to extend the grace period for obtaining a tax-paid decal for a snowmobile from 10 to 20 days; amending sections 53-1014 and 53-1026, R. C. M. 1947.

53-1014. Transfer of interest. (1) Upon a transfer of any certificate of ownership to a snowmobile registered as required under the provisions of this chapter, the person whose title or interest is to be transferred shall write his signature with pen and ink upon the certificate of ownership issued for the snowmobile, in the appropriate space provided upon the reverse side of the certificate, and such signature shall be acknowledged before a notary public.

(2) Within 20 calendar days thereafter, the transferee shall forward the certificate of ownership so endorsed together with the information required under this chapter, to the registrar, who shall file the same upon receipt thereof. No certificate of ownership may be issued by the registrar of motor vehicles until the outstanding certificates are surrendered to that office or their loss established to his reasonable satisfaction. The registrar of motor vehicles shall collect a fee of \$3 for each application for transfer of ownership.

(3) The provisions of subsection (2) of this section, requiring a transferee to forward the certificate of ownership after endorsement to the registrar, do not apply in the event of the transfer of a snowmobile to a duly licensed snowmobile dealer intending to resell the snowmobile and who operates it only for demonstration purposes, but every such dealer, upon transferring such interest, shall deliver the certificate of ownership with an application for a new certificate executed by the new owner in accordance with the provisions of this chapter. The registrar, upon receipt of the certificate of ownership and application for a new certificate, together with the conditional sales contract or other lien, if any, shall issue a new certificate of ownership together with a statement of any conditional sales contract, mortgage, or other lien.

History: En. Sec. 3, Ch. 434, L. 1971; amd. Sec. 1, Ch. 124, L. 1977; amd. Sec. 2, Ch. 402, L. 1977; amd. Sec. 3, Ch. 421, L. 1977.

Compiler's Notes

This section was amended three times in 1977 by Chs. 124, 402, and 421. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by all amendments.

Amendments

Chapter 124, Laws of 1977, substituted "the snowmobile" for "such vehicle" in two places; and made minor changes in phraseology, punctuation and style.

Chapter 402, Laws of 1977, substituted "20 calendar days" for "ten (10) days" near the beginning of subsection (2); and made minor changes in phraseology, punctuation and style.

Chapter 421, Laws of 1977, substituted "certificate of ownership" near the beginning of the section for "title or in-

terest of an owner or owner in or"; substituted "chapter" for "act" in three places; deleted "and the certificate of registration" after "endorsed" near the beginning of subsection (2); deleted "and certificate of registration" before "may be issued" in the second sentence of subsection (2); increased the fee in the last sentence of subsection (2) from \$2 to \$3; deleted "and the certificate of registration" after "endorsement" near the beginning of subsection (3); substituted "with an application for a new certificate" near the middle of subsection (3) for "and certificate of registration with an application for registration"; substituted "certificate of ownership and application for a new certificate" near the middle of subsection (3) for "certificate of ownership, certificate of registration and application for registration"; deleted "and certificate of registration" before "together with a statement" near the end of the section; and made minor changes in phraseology, punctuation and style.

53-1015. Lost or mutilated certificates. In the event any certificate of ownership is lost, mutilated, or becomes illegible, the persons to whom the same were issued shall immediately make application for and may obtain a duplicate thereof, upon payment of a fee of \$1.

History: En. Sec. 4, Ch. 434, L. 1971; amd. Sec. 4, Ch. 421, L. 1977.

Amendments

The 1977 amendment deleted "registra-

tion or" before "ownership" near the beginning of the section; and made minor changes in phraseology, punctuation and style.

53-1016. Exemptions. (1) The provisions of this chapter, with respect to certification of ownership, do not apply to snowmobiles owned or used by the United States or another state or any agency or political subdivision thereof, any snowmobile registered in a country other than the United States and to be temporarily used within this state for a period of not more than 30 days, or to any snowmobile registered in another state of the United States but to be temporarily used within this state for not more than 30 days. Snowmobiles owned by the state of Montana or any agency or political subdivision thereof are exempt only from the payment of fees and shall otherwise comply with all the requirements of this chapter.

(2) No political subdivision of this state may prescribe further licensing or registration of snowmobiles and no political subdivision may levy fees or charges for use or operation of snowmobiles within the subdivision.

(3) The provisions of this chapter with respect to registration and certification of ownership do not apply to unregistered snowmobiles owned by nonresidents of the state of Montana displaying visual proof that a "nonresident temporary-use permit" has been purchased.

History: En. Sec. 5, Ch. 434, L. 1971;
amd. Sec. 5, Ch. 421, L. 1977.

Amendments

The 1977 amendment substituted "cer-

tification of ownership" near the beginning of subsection (1) for "registration and certification of title"; added subsection (3); and made minor changes in phraseology, punctuation and style.

53-1016.1. Nonresident temporary-use permits. (1) The requirements pertaining to the "nonresident temporary-snowmobile-use permit" are as follows:

(a) Application for the issuance of the permit shall be made at locations and upon forms prescribed by the department. The forms shall include but are not limited to:

- (i) applicant's name and permanent address;
- (ii) make, model, year, and serial number of the snowmobile; and
- (iii) affidavit declaring the nonresidency of the applicant.

(b) Upon submission of the application and a fee of \$6, a nonresident temporary-snowmobile-use sticker shall be issued. The sticker shall be displayed in a conspicuous manner on the snowmobile.

(2) The temporary permit is valid for a consecutive 30-day period as designated by the permit.

(3) The permit is not proof of ownership and no certificate of ownership may be issued.

(4) All money collected by payment of fees under this section shall be turned over to the state treasurer and placed in the earmarked revenue fund to the credit of the department of fish and game with one-half to be used in administering this section and one-half to be used in the development, maintenance, and operation of snowmobile facilities.

(5) The failure to display the permit as required by this section or

the making of false statements in obtaining the permit is a misdemeanor, punishable by a fine of not less than \$25 or more than \$100.

History: En. 53-1016.1 by Sec. 6, Ch. 421, L. 1977.

53-1017. Report of stolen and recovered snowmobiles. The sheriff of every county of the state and the chief of police or commissioner of police of every city shall make an immediate report to the registrar of motor vehicles of all snowmobiles reported to him as stolen or recovered, upon forms provided by the registrar of motor vehicles. Upon receipt of such information, the registrar of motor vehicles shall file the same in an index to be known as the "stolen and recovered snowmobile index". The registrar of motor vehicles shall file reports of stolen and recovered snowmobiles reported to him from other states. Once a month the registrar of motor vehicles shall prepare a list of all snowmobiles stolen or recovered during the previous month and forward a copy of the same to every sheriff and all police departments in cities of the first, second, and third class. Such list shall also be forwarded to the secretary of state or other proper official in each state of the United States. Before a certificate of ownership may be issued under this chapter, the motor and serial number on the snowmobile for which such certificate is to be issued shall be checked against the stolen and recovered snowmobile index.

History: En. Sec. 6, Ch. 434, L. 1971; amd. Sec. 2, Ch. 124, L. 1977; amd. Sec. 11, Ch. 421, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 124 and once by Ch. 421. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 124, Laws of 1977, made minor changes in phraseology and punctuation.

Chapter 421, Laws of 1977, deleted a former second sentence which read "Failure on the part of any officer shall be deemed to be misfeasance in office and shall constitute grounds for removal"; substituted "ownership" after "certificate of" in the last sentence for "title, as heretofore provided"; substituted "snowmobile for which such certificate is to be issued" in the last sentence for "motor vehicle to be registered"; and made minor changes in phraseology and punctuation.

53-1018. Operation on public roads and streets. (1) No person shall operate a snowmobile upon a controlled access highway or facility at any time. Snowmobile operation may be permitted on the roadway or shoulder of any public road or highway, state highway, county road, or city street located within the boundaries of any municipality, only in the event that the street, road, or highway is drifted or covered by snow to such an extent that travel thereon by other motor vehicles is impractical or impossible; the operator has received permission or is otherwise authorized for such travel by the municipality in the case of town or city streets, the board of county commissioners for county roads, or the state highway patrol for all other highways; or such operation has been specifically so authorized on municipal streets by a municipal ordinance.

(2) A snowmobile may make a direct crossing of a street or highway whenever such crossing is necessary to get to another authorized area of operation. Such crossing shall be made at an angle of approximately 90

degrees to the direction of traffic at a place where no obstruction prevents a quick and safe crossing. The snowmobile shall make a complete stop before entering upon any part of traffic way, and the operator shall yield the right-of-way to all oncoming traffic.

(3) No snowmobile may be operated upon a public street or, highway, when permitted to do so by this chapter, unless equipped with at least one head lamp and one tail lamp, which shall be lighted at all times during such operation, and unless equipped with a suitable braking device which may be operated by either hand or foot.

(4) The operator of a snowmobile who operates his vehicle upon a public roadway, street or highway when allowed to do so under the provisions of this chapter, shall have in his possession a license to drive a motor vehicle as required by the laws of the state of Montana. An operator who crosses a street, road or highway, or who operates a snowmobile upon a street, road or highway that is drifted or covered with snow to such an extent that travel thereon by other motor vehicles is impractical or impossible, or who operates a snowmobile in any other areas of the state where operation is lawfully permitted is not required to apply for or possess a driver's license under the laws of the state of Montana.

History: En. Sec. 7, Ch. 434, L. 1971; amd. Sec. 12, Ch. 421, L. 1977.

Amendments

The 1977 amendment deleted "other" before "public road or highway" near the beginning of the second sentence of subsection (1); substituted "has received permission or is otherwise authorized for such travel" in the second sentence of subsection (1) for "is in possession of a written permit for such travel issued";

substituted "traffic" in the second sentence of subsection (2) for "the highway"; substituted "traffic way" in the last sentence of subsection (2) for "the highway or road"; inserted "or who operates a snowmobile upon a street, road or highway that is drifted or covered with snow to such an extent that travel thereon by other motor vehicles is impractical or impossible" in the last sentence of subsection (4); and made minor changes in phraseology, punctuation and style.

53-1019. Unlawful operation on streets and highways. It is unlawful for any person to drive or operate any snowmobile upon a public street or highway in any one or more of the following manners:

- (1) at a rate of speed greater than provided by law for motor vehicles;
- (2) while under the influence of intoxicating liquor or narcotics or habit-forming drugs;
- (3) in a careless or reckless manner so as to endanger the person or property of another or to cause injury or damage to either; or
- (4) operation of a snowmobile or permitting such operation by any person who by reason of age or physical or mental disability is incapable of operating the snowmobile as required for safety under the prevailing circumstances.

History: En. Sec. 8, Ch. 434, L. 1971; amd. Sec. 3, Ch. 124, L. 1977; amd. Sec. 13, Ch. 421, L. 1977.

made a composite section embodying the changes made by both amendments.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 124 and once by Ch. 421. Since the amendments do not appear to conflict, the code commissioner has

Amendments

Chapter 124, Laws of 1977, deleted a former subdivision (4) reading "Without a lighted head and taillight between the hours of dusk and dawn"; redesignated former subdivision (5) as subdivision (4);

and made minor changes in phraseology, punctuation and style.

Chapter 421, Laws of 1977, substituted "It is" for "It shall be" at the beginning of the section; deleted a former subdivision (4) reading "Without a lighted head

and taillight between the hours of dusk and dawn"; redesignated subdivision (5) as subdivision (4); and made minor changes in phraseology, punctuation and style.

53-1020. Other unlawful operation. (1) No person while operating a snowmobile may use the same:

(a) for the purpose of driving, rallying, or harassing any of the game animals, game birds, or fur-bearing animals of the state or any livestock. (An owner of livestock is not prohibited from managing or driving his own livestock by the use of snowmobiles and may direct other persons to so manage or drive his livestock and the department of fish and game, including its duly authorized employees, is not prohibited from managing or driving game animals, game birds, or fur-bearing animals by the use of snowmobiles);

(b) to discharge a firearm from or upon a snowmobile;

(c) without a lighted headlight and taillight between the hours of dusk and dawn;

(2) (a) Except as provided in this section, every snowmobile shall be equipped at all times with noise-suppression devices, including an exhaust muffler in good working order and in constant operation. No snowmobile may be modified by any person in any manner that will amplify or otherwise increase total noise emissions to a level greater than that emitted by the snowmobile as originally constructed, regardless of date of manufacture.

(b) No new snowmobile manufactured prior to June 30, 1975, except snowmobiles designated for competition purposes only, may be sold or offered for sale unless that machine has been certified by the manufacturer as being able to conform to a sound level limitation of not more than 82 dbA measured at 50 feet. Every person who owns or operates a snowmobile manufactured after June 30, 1972, but prior to June 30, 1975, shall maintain his machine in such a manner that it will not exceed a sound level limitation of 82 dbA measured at 50 feet.

(c) No new snowmobile manufactured after June 30, 1975, except snowmobiles designated for competition purposes only, may be sold or offered for sale unless that machine has been certified by the manufacturer as being able to conform to a sound level limitation of not more than 78 dbA measured at 50 feet. Every person who owns or operates a snowmobile manufactured after June 30, 1975, shall maintain his machine in such a manner that it will not exceed a sound level limitation of 78 dbA measured at 50 feet.

(d) The department may adopt and revise sound level limitations for all snowmobiles manufactured after June 30, 1975. However, a sound level limitation adopted or revised by the department may not be higher than a decibel standard of 78 dbA measured at 50 feet. The adoption or revision of sound level limitation by the department shall be effective beginning June 30 of the succeeding calendar year and any sound level limitation formally adopted or revised shall remain in effect for a minimum

period of 2 years. Every person who owns or operates a snowmobile manufactured after June 30, 1975, shall maintain his machine in compliance with the sound level limitation which is applicable to new snowmobiles manufactured during the period that a sound level limitation adopted by the department is in effect.

(e) A manufacturer who certifies that a new snowmobile can comply with the noise limitation requirements of this chapter shall affix a permanent notice of that certification to every snowmobile offered for sale in the state of Montana.

(f) In certifying that a new snowmobile can comply with the noise limitation requirements of this chapter, a manufacturer shall make such a certification based upon measurements made in accordance with SAE recommended practice J192, as amended. The department, in enforcing the provisions of this act, shall make measurements of snowmobile noise in accordance with applicable practices outlined in the "procedure for sound level measurements of snowmobiles" used by the international snowmobile industry association (January, 1969), as amended, or with such other standards for measurement of sound level as the department may adopt.

(g) This section does not apply to organized races or similar competitive events held on

(i) private lands, with the permission of the owner, lessee, or custodian of the land; or

(ii) public lands, with the consent of the public agency having the authority to grant such consent, provided that total sound produced by such an event may not exceed 50 dbA at any point 50 feet or more outside the area under the control of the sponsoring entity.

History: En. Sec. 9, Ch. 434, L. 1971; amd. Sec. 2, Ch. 124, L. 1973; amd. Sec. 2, Ch. 91, L. 1974; amd. Sec. 1, Ch. 161, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 14, Ch. 421, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 161 and once by Ch. 421. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

The 1973 amendment added the proviso to subdivision (1).

The 1974 amendment rewrote subdivision (3) which, in substance, provided that after June 30, 1972, manufacturers of new snowmobiles should certify that the vehicle conformed with sound level limitation of not more than eighty-five decibels, specifying the scale and methods for testing, giving the commission certain discretionary powers in respect to noise limitations, requiring certain labeling of the vehicle, and providing certain exemptions;

and substituted "to operate" for "from operating" near the end of subdivision (4).

Chapter 161, Laws of 1977, deleted "but prior to June 30, 1978" after "June 30, 1975" in two places in subdivision (3) (c); deleted a former subdivision (3)(d) which read: "No new snowmobile manufactured after June 30, 1978, except snowmobiles designated for competition purposes only, may be sold or offered for sale unless that machine has been certified by the manufacturer as being able to conform to a sound level limitation of not more than seventy-three (73) dbA measured at fifty (50) feet. Every person who owns or operates a snowmobile manufactured after June 30, 1978, shall maintain his machine in such a manner that it will not exceed a sound level limitation of seventy-three (73) dbA measured at fifty (50) feet"; redesignated former subdivisions (3)(e) through (3)(h) as subdivisions (3)(d) through (3)(g); substituted "June 30, 1975" in the first and fourth sentences of subdivision (3) (d) for "June 30, 1978"; substituted "78 dbA" near the end of the second sentence of subdivision (3)(d) for "seventy-three

(73) dbA"; and made minor changes in phraseology and style.

Chapter 421, Laws of 1977, inserted the subsection (1) designation at the beginning of the section; redesignated former subdivisions (1) and (2) as subdivisions (1)(a) and (1)(b); inserted subdivision (1)(c); redesignated former subdivision (3) as subsection (2); deleted a former

subdivision (4) which read "Upon a railroad right of way or railroad track, provided, however, it shall not be unlawful for officers or employees of any railroad operating over said tracks to operate snowmobiles thereon"; and made minor changes in phraseology, punctuation and style.

53-1021. Accidents involving snowmobiles. The owner or operator of a snowmobile which is involved in any accident, collision, or upset upon a public street or highway where personal injury occurs to any person, or where property damage exceeds one hundred dollars (\$100), shall report the accident or occurrence to a state or local law-enforcement agency responsible for collecting reports of accidents involving motor vehicles.

History: En. Sec. 10, Ch. 434, L. 1971.

53-1022. Enforcement. The following persons may enforce the provisions of this chapter:

(1) the enforcement officers employed by the state department of fish and game, with respect to violations relating to wildlife or birds, discharging firearms, or sound level limitations. However, with respect to the sale of any new snowmobile which is subject to the provisions of this chapter, the attorney general of the state of Montana shall, upon the request of the department, sue for the recovery of the penalties provided in 53-1023 and bring an action for a restraining order or temporary or permanent injunction against a person who sells or offers to sell a new snowmobile that does not satisfy the sound level limitations imposed by this chapter.

(2) the sheriffs of the respective counties and the police officers of cities and towns, within their respective jurisdictions, and the state highway patrol, with respect to any violation of this chapter upon the public streets or highways or any public right-of-way.

History: En. Sec. 11, Ch. 434, L. 1971; amd. Sec. 3, Ch. 91, L. 1974; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 15, Ch. 421, L. 1977.

Amendments

The 1974 amendment divided the section into subdivisions (1) and (2); in subdivision (1), substituted "wildlife" for "game animals" near the end of the first

sentence; substituted "sound level limitations" for "mufflers" at the end of the first sentence; and added the last sentence; and in subdivision (2) added "or any public right of way" at the end of the subdivision.

The 1977 amendment substituted "chapter" throughout the section for "act"; and made minor changes in punctuation and style.

53-1023. Penalties. (1) A person who violates any provision of this chapter or a rule adopted pursuant thereto shall pay a civil penalty of not less than \$15 or more than \$500 for each separate violation.

(2) A person who willfully violates any provision of this chapter or a rule adopted pursuant thereto shall pay a civil penalty of not less than \$50 or more than \$1,000 for each separate violation.

(3) A manufacturer who certifies that a new snowmobile can meet the sound level limitations imposed by this chapter shall be subject to the

penalty provisions of subsections (1) and (2) if any machine so certified does not meet the appropriate sound level limitation.

(4) For the purposes of this section, every sale of a new snowmobile that does not meet the sound level limitations imposed by this chapter constitutes a separate violation.

History: En. Sec. 12, Ch. 434, L. 1971; amd. Sec. 4, Ch. 91, L. 1974; amd. Sec. 16, Ch. 421, L. 1977.

Amendments

The 1974 amendment rewrote this section which formerly provided, in substance, that violations should constitute misdemeanors, and providing that for violations upon public highways, punishment should be as provided by the motor vehicle law; that for harassing animals or birds, punishment should be as provided by law; and that for other viola-

tions, punishment should be as provided by the law for misdemeanors.

The 1977 amendment substituted "chapter" for "act" throughout the section; deleted references to regulation after "rule" in subsections (1) and (2); and made minor changes in phraseology and style.

Repealing Clause

Section 13 of Ch. 434, Laws 1971 read "Sections 53-1001 through 53-1011, R. C. M., 1947, are hereby repealed."

53-1024. Repealed.

Repeal

Section 53-1024 (Sec. 1, Ch. 435, L. 1971), relating to definitions for the tax

on snowmobiles, was repealed by Sec. 22, Ch. 421, Laws 1977.

53-1025. Display of tax-paid decals on snowmobiles required—application and issuance. (1) No snowmobile may be operated by any person in the state of Montana unless there is displayed in a conspicuous place on it a decal as visual proof that Montana personal property taxes have been paid on it for the current year.

(2) Application for the tax-paid decal shall be made to the county treasurer upon forms to be furnished for this purpose, which may be obtained from the registrar of motor vehicles or at the county assessor's office in the county where the owner resides. The application shall contain the following information:

- (a) name of owner;
- (b) address;
- (c) certificate of ownership number;
- (d) name of manufacturer;
- (e) model number;
- (f) make;
- (g) horsepower;
- (h) year of manufacture;
- (i) statement evidencing assessment and payment of property tax; and
- (j) such other information as the registrar of motor vehicles may require.

(3) The application shall be signed by the county treasurer and transmitted by him to the registrar of motor vehicles accompanied by a fee of \$2. All moneys collected from payment of the fees and all interest accruing from use of these moneys shall be turned over to the state treasurer and placed in the earmarked revenue fund to the credit of the department of

fish and game, with \$1 designated for use in enforcing the purposes of this chapter and \$1 designated for use in the development, maintenance, and operation of snowmobile facilities. Upon receipt of the application in approved form, the registrar of motor vehicles or county treasurer shall issue to the applicant a decal in the style and design prescribed by the registrar of motor vehicles and of a different color than the preceding year, numbered in sequence.

(4) Before filing the application with the county treasurer, the applicant shall submit it to the county assessor of the county and the county assessor shall enter on the application in a place provided for that purpose the market value and taxable value of the snowmobile for the year for which the application is made.

(5) The applicant shall pay the county treasurer the application fee and the personal property taxes assessed against the snowmobile for the current year before the application may be accepted by the county treasurer.

History: En. Sec. 2, Ch. 435, L. 1971; amd. Sec. 19, Ch. 391, L. 1973; amd. Sec. 1, Ch. 494, L. 1973; amd. Sec. 2, Ch. 249, L. 1974; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 17, Ch. 421, L. 1977; amd. Sec. 44, Ch. 566, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 421 and once by Ch. 566. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 391, Laws of 1973, substituted references to the department of revenue for references to the board of equalization throughout the section.

Chapter 494, Laws of 1973, made the same changes as did Chapter 391, and in addition inserted "or the county treasurer" near the beginning of the second sentence; substituted "county treasurer" for "owner" near the beginning of the third sentence; increased the fee for the decal from \$1.00 to \$2.00 at the end of the third sentence; inserted the fourth sentence; inserted "or county treasurer" near the beginning of the fifth sentence; and made minor changes in phraseology.

The 1974 amendment deleted "state

department of revenue" before "the county treasurer" in the second sentence of subsection (a); substituted "registrar of motor vehicles" for "department" throughout subsection (a); added subsections (b) and (c); and made minor changes in style.

Chapter 421, Laws of 1977, redesignated subsections (a) to (c) as subsections (1) to (3); substituted "certificate of ownership" in the second sentence of subsection (1) for "registration"; inserted "and all interest accruing from use of these moneys" near the beginning of the fourth sentence of subsection (1); inserted "maintenance, and operation of" before "snowmobile facilities" at the end of the fourth sentence of subsection (1); and made minor changes in phraseology, punctuation and style.

Chapter 566, Laws of 1977, redesignated former subsection (a) as subsections (1) to (3); redesignated former subsections (b) and (c) as subsections (4) and (5); substituted "The application shall contain" near the end of the introductory paragraph of subsection (2) for "and is to provide for substantially"; substituted "market value and taxable value" near the end of subsection (4) for "full and true and assessed valuation value"; and made minor changes in phraseology, punctuation and style.

DECISIONS UNDER FORMER LAW

Flathead Reservation Indians

This section is invalid as conflicting with federal law in so far as it requires the payment of a motor vehicle tax or other personal property taxes by members of the Confederated Salish and Kootenai

Tribes residing on the Flathead Reservation. *Moe v. Confederated Salish and Kootenai Tribes*, — US —, 48 L Ed 2d 96, 96 S Ct 1634, affirming 392 F Supp 1325.

53-1025.1. Duplicate decal. In the event any tax-paid decal is lost, mutilated, or becomes illegible, the persons to whom the same were issued

shall immediately make application for and may obtain a duplicate thereof, upon payment of a fee of \$1 to the county treasurer.

History: En. Sec. 2, Ch. 494, L. 1973; amd. Sec. 18, Ch. 421, L. 1977.

Title of Act

An act to provide that the fee of two dollars (\$2) for issuance of decals for snowmobiles shall be deposited with the state treasurer to the credit of the state fish and game commission; amending section 53-1025, R. C. M. 1947.

Amendments

The 1977 amendment substituted "tax-paid decal" near the beginning of the section for "registration receipt or decal"; and made minor changes in phraseology, punctuation and style.

53-1026. Application to be made annually—grace period—proof of purchase. (1) Application must be made to the county treasurer for the issuance of tax-paid decals annually. All tax-paid decals expire on June 30 of each year.

(2) An owner of a newly purchased snowmobile shall have a grace period of 20 calendar days from the date of purchase to make application for a current tax-paid decal, provided that at all times during that period a bill of sale or other proof of purchase reciting the date of purchase shall be carried by the operator or with the snowmobile. An owner or operator of such a snowmobile being operated after the 20-day grace period without a current tax-paid decal displayed on the snowmobile shall be subject to the penalties of 53-1027, as amended.

History: En. Sec. 3, Ch. 435, L. 1971; amd. Sec. 3, Ch. 249, L. 1974; amd. Sec. 1, Ch. 327, L. 1975; amd. Sec. 4, Ch. 124, L. 1977; amd. Sec. 3, Ch. 402, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 124 and once by Ch. 402. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

The 1974 amendment substituted "county treasurer" for "board" in the first sentence; deleted "Snowmobiles may be operated between January 1 and January 20 in each year without displaying the current year's decal on the condition that application therefor has been made"; and added the second sentence.

The 1975 amendment inserted the subsection (1) designation; substituted "June 30 of each year" for "December 31 of the year in which they are issued" in subsection (1); deleted "and application for the issuance of a tax-paid decal must be filed with the county treasurer not later than January 31 of each year" at the end of the second sentence in subsection (1); and added subsection (2).

Chapter 124, Laws of 1977, added "as amended" after "penalties of 53-1027" at the end of the section; and made minor changes in phraseology, punctuation and style.

Chapter 402, Laws of 1977, increased the grace period from 10 days to 20 calendar days; and made a minor change in style.

53-1027. Failure to display decal a misdemeanor—penalty. (1) The failure to display a current tax-paid decal during the time provided in this chapter is a misdemeanor, punishable by a fine of not less than \$10 or more than \$50.

(2) All fines and forfeitures collected under Title 53, chapter 10 relating to snowmobiles shall be transmitted to the state treasurer who shall deposit such fines and forfeitures in the earmarked revenue fund to the credit of the department of fish and game to be used only for snowmobile safety and education.

History: En. Sec. 4, Ch. 435, L. 1971; amd. Sec. 19, Ch. 421, L. 1977.

Amendments

The 1977 amendment inserted the sub-

section (1) designation; substituted "chapter" for "act" in subsection (1); added subsection (2); and made minor changes in phraseology and style.

53-1028. Officers authorized to enforce chapter. The department's enforcement personnel, the sheriffs and their deputies of the various counties of the state, the Montana highway patrol, and the police of each municipality shall enforce the provisions of this chapter.

History: En. Sec. 5, Ch. 435, L. 1971; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 20, Ch. 421, L. 1977.

Amendments

The 1977 amendment substituted "chapter" at the end of the section for "act."

53-1029. Issuance of dealer registration certificate. (1) A dealer registration certificate shall be issued in accordance with this chapter.

(2) Upon receipt of dealer application and payment of fees which will be \$5, the dealer shall be issued two dealer snowmobile identification cards which shall be carried by dealer or dealer's customer when operating or demonstrating dealer's snowmobiles.

(3) No bond is required of the dealer.

(4) Additional dealer snowmobile identification cards may be purchased by the dealer for a fee of \$2.

(5) A dealer registration certificate and identification cards expire on June 30 following the date of issuance.

(6) All money collected from such fees and all interest accruing from use of this money shall be deposited in the earmarked revenue fund to the credit of the department of fish and game, with one-half designated for use in enforcing the purposes of this chapter and one-half designated for use in the development, maintenance, and operation of snowmobile facilities.

History: En. Sec. 3, Ch. 494, L. 1973; amd. Sec. 21, Ch. 421, L. 1977.

subsections (5) and (6); and made minor changes in phraseology and style.

Amendments

The 1977 amendment substituted "chapter" for "act" in subsection (1); added

Repealing Clause

Section 22 of Ch. 421, Laws 1977 read "Section 53-1024, R. C. M. 1947, is repealed."

CHAPTER 11—MOTOR VEHICLE INSPECTIONS

(Repealed—Section 1, Chapter 237, Laws of 1977)

53-1101 to 53-1115. Repealed.

Repeal

Sections 53-1101 to 53-1115 (Secs. 1 to 15, Ch. 289, L. 1974), relating to motor

vehicle inspections, were repealed by Sec. 1, Ch. 237, Laws 1977.

TITLE 54—NARCOTIC DRUGS

- Chapter 1. Dangerous Drug Act, 54-132 to 54-138.
3. Controlled substances, 54-301 to 54-327.

CHAPTER 1—DANGEROUS DRUG ACT

- Section 54-132. Criminal sale of dangerous drugs.
54-133. Criminal possession of dangerous drugs.
54-133.1. Criminal possession with intent to sell.
54-134. Fraudulently obtaining dangerous drugs.
54-135. Altering labels on dangerous drugs.
54-136. Penalty for fraudulently obtaining dangerous drugs or altering the labels of dangerous drugs.
54-137. Alternative sentencing authority.
54-138. Jurisdiction.

54-101 to 54-128. Repealed.

Repeal

Sections 54-101 to 54-128 (Secs. 1 to 26, 28, 30, Ch. 176, L. 1937; Secs. 1 to 3, Ch. 146, L. 1941; Sec. 1, Ch. 12, L. 1949; Secs. 1, 2, Ch. 174, L. 1953; Secs. 1 to 7, Ch. 7,

L. 1955; Sec. 1, Ch. 6, L. 1959), the Uniform Drug Act, was repealed by Sec. 14, Ch. 314, Laws 1969. For new law, see secs. 54-301 to 54-327.

54-129 to 54-131. Repealed.

Repeal

Sections 54-129 to 54-131 (Secs. 1 to 3, Ch. 314, L. 1969), relating to dangerous

drugs, were repealed by Sec. 31, Ch. 412, Laws 1973. For new law, see secs. 54-301 to 54-327.

54-132. Criminal sale of dangerous drugs. (1) A person commits the offense of criminal sale of dangerous drugs if he sells, barter, exchange, or give away or manufactures, prepares, cultivates, compounds, or processes any dangerous drug, as defined in 54-301.

(2) A person convicted of criminal sale of an opiate, as defined in 54-301(18), shall be imprisoned in the state prison for a term of not less than 2 years or more than life, except as provided in 95-2206.18.

(3) A person convicted of criminal sale of dangerous drugs not otherwise provided for in subsection (2) shall be imprisoned in the state prison for a term of not less than 1 year or more than life.

(4) Practitioners and agents under their supervision acting in the course of a professional practice, as defined by 54-301, are exempt from this section.

History: En. Sec. 4, Ch. 314, L. 1969; amd. Sec. 1, Ch. 55, L. 1973; amd. Sec. 24, Ch. 412, L. 1973; amd. Sec. 1, Ch. 258, L. 1974; amd. Sec. 1, Ch. 359, L. 1977; amd. Sec. 1, Ch. 584, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 359 and once by Ch.

584. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

NOTE.—The following states have enacted the Uniform Narcotic Drug Act: Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, District

of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Puerto Rico, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Virgin Islands, Washington, West Virginia, Wisconsin, and Wyoming.

Title of Act

An act providing for regulation of the possession and sale of dangerous drugs in the state of Montana; defining dangerous drugs to include depressant, stimulant, hallucinogenic and narcotic drugs and defining certain words and phrases in connection therewith; defining who may lawfully sell and possess dangerous drugs; providing for the fraudulent obtaining of dangerous drugs or the alteration of labels; providing for the enforcement of unlawful sale and possession; providing for the state board of pharmacy to regulate, license and supervise, and designate other dangerous drugs after proper notice and hearing; amending section 95-302, R. C. M. 1947, to exclude trial jurisdiction in the justices' courts in cases commenced under this act; repealing sections 27-724, 27-725, 54-101 through 54-128 inclusive, 94-35-123, 94-35-148, 94-35-199, R. C. M. 1947.

Amendments

Chapter 55, Laws of 1973, deleted from subsection (b) a second sentence reading "Any person of age twenty-one years or under convicted of a first violation under this section shall be presumed to be entitled to a deferred imposition of sentence"; and made a minor change in style.

Chapter 412, Laws of 1973, deleted "and does not come within the exceptions of section 3" from the end of subsection (a); and deleted from subsection (b) the same sentence deleted by Ch. 55.

The 1974 amendment inserted in subsection (2) "barter, exchanges, gives away, or offers to sell, barter, exchange or give away"; and added subsection (c).

Chapter 359, Laws of 1977, redesignated subsections (a) to (c) as subsections (1) to (3); substituted "54-301" at the end of subsection (1) for "this act"; inserted "as defined by 54-301" in subsection (3); and made minor changes in phraseology, punctuation and style.

Chapter 584, Laws of 1977, redesignated subsection (a) as subsection (1); inserted subsection (2); redesignated subsections (b) and (c) as subsections (3) and (4); inserted "not otherwise provided for in subsection (2)" in subsection (3); and

made minor changes in phraseology, punctuation and style.

Cross-References

Justices' court jurisdiction, sec. 95-302.

Constitutionality

This statute is not unconstitutional just because the legislature defined the offense of criminal sale of dangerous drugs in terms of several types of conduct that might constitute that offense, and although the Montana legislature could have set forth a separate statute prohibiting the cultivation of marijuana and could have labeled it accordingly, defendant who cultivated marijuana was guilty of the offense of criminal sale of dangerous drugs. *State ex rel. LeMieux v. District Court*, — M —, 531 P 2d 665.

Definitions

Montana does not have two separate drug acts in force; sections 54-301 through 54-327 were intended to amend and be included as part of Montana Dangerous Drug Act and term "dangerous drug" as used in this section and 54-133 is defined in 54-301. *State ex rel. Lance v. District Court*, — M —, 542 P 2d 1211.

Dismissal of Charge

Alternative motion to amend information from preparation of drugs to sale of drugs in order to conform with the affidavit, or to dismiss and refile charges, would have been tantamount to amending the charge as a matter of substance and was properly denied by the trial court. *State v. Tropf*, — M —, 530 P 2d 1158.

Federal Drug Law Does Not Pre-empt Montana Drug Law

Federal Controlled Substances Act, 21 U.S.C. § 903, does not pre-empt Montana law on narcotic drugs, Title 54. *State ex rel. Lance v. District Court*, — M —, 542 P 2d 1211.

Information Insufficient

Information charging offense under this section was insufficient where it contained neither identity of informer nor specific facts concerning the offense and identity of time and place to protect accused from double jeopardy. *State ex rel. Offerdahl v. District Court*, 156 M 432, 481 P 2d 338.

Nature of Drug

Evidence that victims hallucinated following ingestion of drugs furnished by defendant and described by him as "acid" established dangerous nature of drugs to support conviction, despite absence of proof of exact type of drug, and the possibility that hallucinations might have

been flashback from previous trips did not necessarily create reasonable doubt. *State v. Dunn*, 155 M 319, 472 P 2d 288.

Possession Only

Trial court's instruction to jury that law implies knowledge that drug was a prohibited drug from mere possession of the drug was an incorrect statement of the law, confusing to the jury, and entitled defendant to new trial. *State v. Anderson*, 159 M 344, 498 P 2d 295.

Repeal Pending Prosecution

Where defendant was charged with selling narcotics in violation of former section 54-102, and between date of commission of crime and time information was

filed legislature repealed former section 54-102 and passed this section of Dangerous Drug Act, such repeal did not bar prosecution under former section since general statutory saving clause, section 43-514, operated to sustain jurisdiction of subject matter in district court. *State ex rel. Huffman v. District Court*, 154 M 201, 461 P 2d 847.

Transfer of Marijuana

The testimony of witnesses was sufficient to support the act of giving or transferring marijuana, which without even considering evidence of a cash transfer, establishes the crime beyond a reasonable doubt. *State v. Thomas*, — M —, 532 P 2d 405.

DECISIONS UNDER FORMER LAW

Dangerous Drug

Defendant was not entitled to have words "and none others" added at end of jury instructions defining dangerous drugs in words of statute. *State v. Dunn*, 155 M 319, 472 P 2d 288.

Deferred Imposition of Sentence

Evidence of sale of two pounds of hashish to three minors, one only 15 years old, was sufficient to overcome presumption of entitlement to deferred imposition of sentence. *Campus v. State*, 157 M 321, 483 P 2d 275.

The statutory presumption of entitlement to deferred imposition of sentence for persons under 21 convicted of a first violation may be overcome where the evidence is sufficient, but, the record itself must disclose the evidence; evidence may be contained within or without proof of the crime itself; aggravating circum-

stances should be substantial evidence beyond the simple facts of the prima facie case. *Campus v. State*, 157 M 321, 483 P 2d 275.

Conditioning deferred imposition of sentence on serving term of 30 days in county jail was within trial court's authority where 18-year-old defendant was convicted of sale of dangerous drugs. *State ex rel. Woodbury v. District Court*, 159 M 128, 495 P 2d 1119, distinguishing *State v. Drew*, 158 M 214, 490 P 2d 230.

Hearsay statement and affidavits which accused defendant of prior dealings in drugs were not admissible in aggravation and mitigation hearing to overcome presumption that defendant was entitled to deferred imposition of sentence, where defendant had no opportunity to cross-examine affiants or even determine if they were known to him. *State v. Harney*, 160 M 55, 499 P 2d 802.

54-133. Criminal possession of dangerous drugs. (1) A person commits the offense of criminal possession of dangerous drugs if he possesses any dangerous drug, as defined in 54-301.

(2) Any person convicted of criminal possession of marijuana or its derivatives in an amount the aggregate weight of which does not exceed 60 grams of marijuana or 1 gram of hashish is, for the first offense, guilty of a misdemeanor and punishable by a fine not to exceed \$1,000 or imprisonment in the county jail for a term not to exceed 1 year or both such fine and imprisonment. A person convicted of a second or subsequent offense under this subsection is punishable by a fine not to exceed \$1,000 or imprisonment in the county jail for a term not to exceed 1 year or in the state prison for a term not to exceed 3 years or both such fine and imprisonment.

(3) A person convicted of criminal possession of an opiate, as defined in 54-301(18), shall be imprisoned in the state prison for a term of not less than 2 years or more than 5 years, except as provided in 95-2206.18.

(4) A person convicted of criminal possession of dangerous drugs not otherwise provided for in subsection (2) or (3) shall be imprisoned in the state prison for a term not to exceed 5 years.

(5) A person of the age of 21 years or under convicted of a first violation under this section shall be presumed to be entitled to a deferred imposition of sentence.

(6) Ultimate users and practitioners and agents under their supervision acting in the course of a professional practice, as defined by 54-301, are exempt from this section.

History: En. Sec. 5, ch. 314, L. 1969; amd. Sec. 1, Ch. 228, L. 1971; amd. Sec. 26, Ch. 412, L. 1973; amd. Sec. 1, Ch. 174, L. 1974; amd. Sec. 2, Ch. 359, L. 1977; amd. Sec. 2, Ch. 584, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 359 and once by Ch. 584. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

The 1971 amendment inserted "other than criminal possession of marihuana and its derivatives as hereinafter provided" in the first sentence of subsection (b); added new second and third sentences to subsection (b); redesignated the former second sentence of subsection (b) as the first sentence of subsection (d); added the second sentence of subsection (d); and made minor changes in phraseology.

The 1973 amendment deleted "and does not come within the exceptions of section 3" from the end of subsection (a).

The 1974 amendment deleted from the beginning of subsection (b) "A person convicted of criminal possession of dangerous drugs, other than criminal possession of marihuana and its derivatives as hereinafter provided, shall be imprisoned by imprisonment in the state prison not to exceed five (5) years"; inserted subsection (c); and redesignated former subsection (c) as subsection (d).

Chapter 359, Laws of 1977, redesignated former subsections (a) through (d) as subsections (1) through (4); deleted a former final sentence which read "Jurisdiction under this section shall be exclusively in the district courts"; added a subsection now designated subsection (6); and made minor changes in phraseology, punctuation and style.

Chapter 584, Laws of 1977, redesignated former subsections (a) and (b) as subsections (1) and (2); inserted subsection (3); redesignated former subsections (c) and (d) as subsections (4) and (5); substituted "subsection (2) or (3)" in subsection (4) for "subsection (b)"; and made minor changes in punctuation and style.

Effective Dates

Section 2 of Ch. 228, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 9, 1971.

Section 2 of Ch. 174, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 11, 1974.

Constitutionality

This section is not unconstitutionally vague and uncertain due to its failure to require knowledge and intent in relation to possession of dangerous drugs since meaning of term "possession" has been so well defined that it cannot be considered ambiguous. *State ex rel. Glantz v. District Court*, 154 M 132, 461 P 2d 193.

Constructive Possession

Possession of airline baggage claim tag was constructive possession of contraband contained in suitcase. *State v. Trowbridge*, 157 M 527, 487 P 2d 530.

Deferred Sentence

Trial court improperly sentenced 21-year-old defendant to three years imprisonment for violation of this section where there was no evidence to overcome the statutory presumption that defendant was entitled to deferred sentence. *State v. Simtob*, 154 M 286, 462 P 2d 873.

Definitions

Montana does not have two separate drug acts in force; sections 54-301 through 54-327 were intended to amend and be included as part of Montana Dangerous Drug Act and term "dangerous drug" as used in 54-132 and this section is defined in 54-301. *State ex rel. Lance v. District Court*, — M —, 542 P 2d 1211.

Elements of Crime

Whether several ingredients besides amphetamine are present within a pill is immaterial in a prosecution under Dangerous Drug Act. *State v. Hull*, 158 M 6, 487 P 2d 1314.

Probable Cause for Arrest

Where relators were arrested and

charged under this section, allegation that probable cause did not exist for their arrest without warrant was without merit in regard to three who were present and lived in house where drugs were found; but probable cause did not exist concerning fourth party arrested who was present on premises but did not live there, notwithstanding later finding of drugs on this party, since mere presence in place where search was made without further proof of probable cause was insufficient to justify arrest. *State ex rel. Glantz v. District Court*, 154 M 132, 461 P 2d 193, distinguished in 158 M 6, 487 P 2d 1314, 1320.

Quantity in Possession

As the Dangerous Drug Act did not require proof of any specific quantity of a dangerous drug in order to constitute violation, it was unnecessary for the jury to find that the defendant possessed an amphetamine pill in sufficient quantity to be

dangerous. *State v. Hull*, 158 M 6, 487 P 2d 1314.

Sentencing

Under subsection (c), a defendant may not be sentenced to a term in jail; and at the termination of the time of deferment or stayed imposition, the sentencing statute (95-2207) authorizes the court to accept a plea withdrawal or to strike the verdict of guilty and order the charge dismissed. *State v. Drew*, 158 M 214, 490 P 2d 230, distinguished in 159 M 128, 495 P 2d 1119, 1123.

Once the presumption provided for in subsection (c) has been found by the trial judge not to have been overcome, the court's discretion is limited by this act to defer the imposition of sentence as provided under subsection (2) of section 95-2206. *State v. Drew*, 158 M 214, 490 P 2d 230, distinguished in 159 M 128, 495 P 2d 1119, 1123.

DECISIONS UNDER FORMER LAW

Exclusive Nature of Statute

Marijuana seized in private residence under search warrant issued by justice of peace was unlawfully seized and warrant was void since, under former section 54-112, only district judge could issue search warrant for narcotics and no search warrant could be issued to search private residence for narcotics. The provisions of former Uniform Drug Act were sole and exclusive provisions governing issuance of search warrants authorizing lawful search

and seizure of narcotic drugs and state's contentions that statute applied only to in rem proceedings to seize and destroy contraband narcotics and did not apply to in personam proceedings against possessor which are governed by criminal code could not be sustained. *State v. Langan*, 151 M 558, 445 P 2d 565, accord, *State v. Kurland*, 151 M 569, 445 P 2d 570 (marijuana inadmissible in criminal prosecution for possession against social guest), distinguished in 158 M 6, 487 P 2d 1314, 1320.

54-133.1. Criminal possession with intent to sell. (1) A person commits the offense of criminal possession with intent to sell if he possesses with intent to sell any dangerous drug as defined in 54-301. No person commits the offense of criminal possession with intent to sell marijuana unless he possesses one kilogram or more.

(2) A person convicted of criminal possession of an opiate, as defined in 54-301(18), with intent to sell shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years, except as provided in 95-2206.18.

(3) A person convicted of criminal possession with intent to sell not otherwise provided for in subsection (2) shall be imprisoned in the state prison for a term of not more than 20 years.

(4) Practitioners and agents under their supervision acting in the course of a professional practice as defined by 54-301 are exempt from this section.

History: En. 54-133.1 by Sec. 1, Ch. 545, L. 1975; amd. Sec. 3, Ch. 584, L. 1977.

nal possession of dangerous drugs with intent to sell.

Amendments

The 1977 amendment inserted subsection (2); redesignated former subsections

Title of Act

An act to provide a penalty for crimi-

(2) and (3) as subsections (3) and (4); subsection (2)" in subsection (3); and inserted "not otherwise provided for in made minor changes in style.

54-134. Fraudulently obtaining dangerous drugs. A person commits the offense of fraudulently obtaining dangerous drugs if he obtains or attempts to obtain a dangerous drug, as defined in 54-301, by:

- (1) fraud, deceit, misrepresentation, or subterfuge;
- (2) falsely assuming the title of or representing himself to be a manufacturer, wholesaler, practitioner, pharmacist, owner of a pharmacy, or other person authorized to possess dangerous drugs;
- (3) the use of a forged, altered, or fictitious prescription;
- (4) the use of a false name or a false address on a prescription; or
- (5) the concealment of a material fact.

History: En. Sec. 6, Ch. 314, L. 1969;
amd. Sec. 3, Ch. 359, L. 1977.

Amendments

The 1977 amendment inserted "as defined in 54-301"; and made minor changes in phraseology, punctuation and style.

54-135. Altering labels on dangerous drugs. A person commits the offense of altering labels on dangerous drugs if he affixes a false, forged, or altered label to or otherwise misrepresents a package or receptacle containing a dangerous drug, as defined in 54-301.

History: En. Sec. 7, Ch. 314, L. 1969;
amd. Sec. 4, Ch. 359, L. 1977.

Amendments

The 1977 amendment added "as defined in 54-301" to the end of the section; and made minor changes in phraseology.

54-136. Penalty for fraudulently obtaining dangerous drugs or altering the labels of dangerous drugs. A person convicted of fraudulently obtaining dangerous drugs or altering the labels on dangerous drugs shall be imprisoned in the county jail for a term not to exceed six (6) months.

History: En. Sec. 8, Ch. 314, L. 1969.

54-137. Alternative sentencing authority. A person convicted of criminal possession of dangerous drugs, fraudulently obtaining dangerous drugs, or altering labels on dangerous drugs, if he is shown to be an excessive or habitual user of dangerous drugs, as defined in 54-301, either from the face of the record or by a presentence investigation, may, in lieu of imprisonment, be committed to the custody of any institution for rehabilitative treatment for not less than 6 months or more than 2 years.

History: En. Sec. 9, Ch. 314, L. 1969;
amd. Sec. 5, Ch. 359, L. 1977.

ined in 54-301" near the middle of the section; and made minor changes in phraseology, punctuation and style.

Amendments

The 1977 amendment inserted "as de-

54-138. Jurisdiction. The district court has exclusive trial jurisdiction over all prosecutions commenced under this chapter.

History: En. Sec. 10, Ch. 314, L. 1969;
amd. Sec. 6, Ch. 359, L. 1977.

Amendments

The 1977 amendment substituted "this chapter" for "the Montana Dangerous

Drug Act"; and made a minor change in phraseology.

Search Warrant

The use of the term "trial jurisdiction" constitutes a legislative acknowledgment that other types of jurisdiction exist in

these cases which are not vested exclusively in the district courts. The present act does not limit the issuance of search warrants to district judges as formerly required, and accordingly warrant issued by justice of the peace was valid. *State v. Snider*, — M —, 541 P 2d 1204.

CHAPTER 3—CONTROLLED SUBSTANCES

- Section 54-301. Definitions.
- 54-302. Administration of act—scheduling and rescheduling of drugs—findings—deviations from federal schedules—substances excluded.
- 54-303. Use of names of drugs in schedules.
- 54-304. Criteria for placement of drug in Schedule I.
- 54-305. Specific dangerous drugs included in Schedule I.
- 54-306. Criteria for placement of drug in Schedule II.
- 54-307. Specific dangerous drugs included in Schedule II.
- 54-308. Criteria for placement of drug in Schedule III.
- 54-309. Specific dangerous drugs included in Schedule III.
- 54-310. Criteria for placement of drug in Schedule IV.
- 54-311. Specific dangerous drugs included in Schedule IV.
- 54-312. Criteria for placement of drug in Schedule V.
- 54-313. Specific dangerous drugs included in Schedule V.
- 54-314. Annual republication of schedules.
- 54-315. Rules to be promulgated by board—fees.
- 54-316. Annual registration required for manufacturer, distributor or dispenser—exceptions—inspection.
- 54-317. Manufacturers and distributors registered unless against public interest—factors considered—practitioners' authority—research with Schedule I drugs—federal registration.
- 54-318. Suspension or revocation of registration—grounds.
- 54-319. Procedure for denial, suspension, revocation, or refusal to renew registration.
- 54-320. Records and inventories required.
- 54-321. Order forms for drugs in Schedules I and II.
- 54-322. Prescription and medical requirements for scheduled drugs.
- 54-323. Educational programs—research—information confidential—possession of drugs by researchers.
- 54-324. Continuation of proceedings under prior law—initial registration.
- 54-325. Prior orders and rules continued in effect.
- 54-326. Uniformity of construction.
- 54-327. Practitioner's failure to register as misdemeanor—penalty.

54-301. Definitions. As used in this act the following definitions apply:

(1) "Administer" means the direct application of a dangerous drug, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(a) a practitioner (or by his authorized agent); or

(b) the patient or research subject at the direction and in the presence of the practitioner.

(2) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.

(3) "Board" means the board of pharmacists provided for in 82A-1602.21.

(4) "Bureau" means the bureau of narcotics and dangerous drugs, United States department of justice, or its successor agency.

(5) "Dangerous drug" means a drug, substance, or immediate precursor in Schedules I through V hereinafter set forth.

(6) "Counterfeit substance" means a dangerous drug which or the container or labeling of which without authorization bears the trademark, trade name, or other identifying mark, imprint, number, or device or any likeness thereof of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the drug.

(7) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a dangerous drug, whether or not there is an agency relationship.

(8) "Department" means the department of professional and occupational licensing provided for in Title 82A, chapter 16.

(9) "Dispense" means to deliver a dangerous drug to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the drug for that delivery.

(10) "Dispenser" means a practitioner who dispenses.

(11) "Distribute" means to deliver other than by administering or dispensing a dangerous drug.

(12) "Distributor" means a person who distributes.

(13) "Drug" means:

(a) a substance recognized as a drug in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary or any supplement to any of them;

(b) a substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals;

(c) a substance (other than food) intended to affect the structure or any function of the body of man or animals; and

(d) a substance intended for use as a component of any article specified in (a), (b), or (c) of this subsection. It does not include a device or its components, parts, or accessories.

(14) "Immediate precursor" means a substance which the board of pharmacists finds and by rule designates as being the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a dangerous drug, the control of which is necessary to prevent, curtail, or limit manufacture.

(15) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a dangerous drug either directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the drug or labeling or relabeling of its container. The term does not include the preparation or compounding of a dangerous drug by an individual for his

own use or the preparation, compounding, packaging, or labeling of a dangerous drug:

(a) by a practitioner as an incident to his administering or dispensing of a dangerous drug in the course of his professional practice; or

(b) by a practitioner or his authorized agent under his supervision for the purpose of or as an incident to research, teaching, or chemical analysis and not for sale.

(16) "Marijuana (marihuana)" means all plant material from the genus *cannabis* containing tetrahydrocannabinol (THC) or seeds of the genus capable of germination.

(17) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(a) opium and opiate and any salt, compound, derivative, or preparation of opium or opiate;

(b) any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the drugs referred to in 17(a) of this section, but not including the isoquinoline alkaloids of opium;

(c) opium poppy and poppy straw; or

(d) coca leaves and any salt, compound, derivative, or preparation of coca leaves and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these drugs, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(18) "Opiate" means any drug having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as a dangerous drug under 54-302, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

(19) "Opium poppy" means the plant of the species *papaver somniferum* L., except its seeds.

(20) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

(21) "Poppy straw" means all parts, except the seeds, of the opium poppy after mowing.

(22) "Practitioner" means:

(a) a physician, dentist, veterinarian, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, or conduct research with respect to or to administer a dangerous drug in the course of professional practice or research in this state; and

(b) a pharmacy or other institution licensed, registered, or otherwise permitted to distribute, dispense, or conduct research with respect to or to

administer a dangerous drug in the course of professional practice or research in this state.

(23) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a substance or drug regulated under the provisions of this act.

(24) "State", when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States of America.

(25) "Ultimate user" means a person who lawfully possesses a dangerous drug for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

(26) The term "prescription" is given the meaning it has in 66-1502 (13).

History: En. Sec. 1, Ch. 412, L. 1973; amd. Sec. 1, Ch. 350, L. 1974; amd. Sec. 1, Ch. 382, L. 1975; amd. Sec. 6, Ch. 187, L. 1977.

Title of Act

An act to amend the Dangerous Drug Act, by adopting substantially the definitions, procedures, standards and schedules and the regulatory provisions of the uniform controlled substances act as recommended by the national conference of commissioners on uniform state laws; by excluding from such schedules non-narcotic drugs which may be lawfully sold over the counter without a prescription; by repealing sections 54-129, 54-130, 54-131, and 66-1504.1, R. C. M. 1947; amending sections 54-132 and 54-133, R. C. M. 1947, by deleting references to section 54-131, R. C. M. 1947; amending section 54-132 by deleting the provision regarding deferred imposition of sentence; providing for severability if any part of this act is determined unconstitutional; and repealing all acts and parts of acts in conflict herewith.

Amendments

The 1974 amendment inserted the definitions of "Board" and "Department."

The 1975 amendment substituted the present subdivision (16) defining marijuana for a former specific definition reading "Marijuana means all parts of the plant *cannabis sativa* L., whether growing or not; the seeds thereof; the resin ex-

tracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination"; and made a minor change in style.

The 1977 amendment made minor changes in phraseology, punctuation and style.

Definitions Apply to Montana Dangerous Drug Act

Montana does not have two separate drug acts in force; sections 54-301 through 54-327 were intended to amend and be included as part of Montana Dangerous Drug Act, and definitions found in this section apply to chapter one, Title 54. State ex rel. Lance v. District Court, — M —, 542 P 2d 1211.

Federal Drug Law Does Not Pre-empt Montana Drug Law

Federal Controlled Substances Act, 21 U.S.C. § 903, does not pre-empt Montana law on narcotic drugs, Title 54. State ex rel. Lance v. District Court, — M —, 542 P 2d 1211.

54-302. Administration of act—scheduling and rescheduling of drugs—findings—deviations from federal schedules—substances excluded. (1) The board of pharmacists shall administer this act and may add drugs to or delete or reschedule all drugs enumerated in the schedules in sections 54-305, 54-307, 54-309, 54-311, or 54-313, pursuant to the rule-making procedures of the Montana Administrative Procedure Act (82-4201

through 82-4225). In making a determination regarding a drug, the board shall consider the following:

- (a) the actual or relative potential for abuse;
- (b) the scientific evidence of its pharmacological effect, if known;
- (c) the state of current scientific knowledge regarding the drug;
- (d) the history and current pattern of abuse;
- (e) the scope, duration, and significance of abuse;
- (f) the risk to the public health;
- (g) the potential of the drug to produce psychic or physiological dependence liability; and
- (h) whether the drug is an immediate precursor of a drug already controlled under this act.

(2) After considering the factors enumerated in subsection (1) the board shall make findings with respect thereto and if it finds the drug has a potential for abuse it shall designate such drug a dangerous drug in the manner set forth in the Montana Administrative Procedure Act.

(3) If the board designates a drug as an immediate precursor, drugs which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

(4) If any drug is designated, rescheduled, or deleted as a "controlled substance" under federal law and notice thereof is given to the board, the board shall similarly control the drug under this act after the expiration of thirty (30) days from publication in the federal register of a final order designating a drug as a "controlled substance" or rescheduling or deleting a drug, unless within that thirty (30) day period, the board objects to inclusion, rescheduling, or deletion. In that case, the board shall cause the reasons for objection to be published and afford all interested parties an opportunity to be heard. At the conclusion of the hearing, the department shall publish the board's decision, which shall be final unless altered thereafter by the board or by statute. Upon publication of objection to inclusion, rescheduling, or deletion under this act by the board, control under this act is stayed until the board's decision is published.

(5) Authority to control under this section does not extend to distilled spirits, liquor, wine, malt beverages, beer, porter, ale, stout or tobacco.

(6) The board shall exclude any non-narcotic drug from a schedule if such drug may, under the Federal Food, Drug, and Cosmetic Act and section 27-716 (a) (2) of the Montana Food, Drug, and Cosmetic Act, be lawfully sold over the counter without a prescription.

History: En. Sec. 2, Ch. 412, L. 1973; amd. Sec. 2, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "board" for "board of pharmacists" throughout the section; substituted "board shall cause the reasons for objection to be published"

in subsection (4) for "board of pharmacists shall publish the reasons for objection"; substituted "the department shall publish the board's decisions" in subsection (4) for "the board of pharmacists shall publish its decisions"; and made minor changes in phraseology, punctuation and style.

54-303. Use of names of drugs in schedules. The dangerous drugs listed or to be listed in the schedules in sections 54-305, 54-307, 54-309, 54-311 and 54-313 are included by whatever official, common, usual, chemical, or trade name designated.

History: En. Sec. 3, Ch. 412, L. 1973; **Amendments**
amd. Sec. 3, Ch. 350, L. 1974. The 1974 amendment made minor changes in style.

54-304. Criteria for placement of drug in Schedule I. The board of pharmacists shall place a drug in Schedule I if it finds that the drug:

- (1) has high potential for abuse; and
- (2) has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

History: En. Sec. 4, Ch. 412, L. 1973.

54-305. Specific dangerous drugs included in Schedule I. (1) The dangerous drugs listed in this section are included in Schedule I.

(2) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation: acetylmethadol, allylprodine, alphacetylmethadol, alphameprodine, alphasmethadol, benzethidine, betacetylmethadol, betameprodine, betamethadol, betaprodine, clonitazene, dextromoramide, dextrophan, diampromide, diethylthiambutene, dimenoxadol, dimepheptanol, dimethylthiambutene, dioxaphetyl butyrate, dipipanone, ethylmethylthiambutene, etonitazene, etoxeridine, furethidine, hydroxypethidine, ketobemidone, levomoramide, levophenacymorphan, morpheridine, noracymethadol, norlevorphanol, normethadone, norpipanone, phenadoxone, phenampromide, phenomorphan, phenoperidine, piritramide, proheptazine, properidine, racemoramide, and trimeperidine.

(3) Any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation: acetorphine, acetyldihydrocodeine, benzylmorphine, codeine methylbromide, codeine-n-oxide, cyprenorphine, desomorphine, dihydromorphine, etorphine, heroin, hydromorphinol, methyl-desorphine, methylhydromorphine, morphine methylbromide, morphine methylsulfonate, morphine-n-oxide, myrophine, nicocodeine, nicomorphine, normorphine, phoclodine, and thebacon.

(4) Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic drugs, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation: 3,4-methylenedioxy amphetamine, 5-methoxy-3,4-methylenedioxy amphetamine, 3,4,5-trimethoxy amphetamine, bufotenine, diethyltryptamine, dimethyltryptamine, 4-methyl-2,5-dimethoxyamphetamine, ibogaine, lysergic acid diethylamide, marihuana, mescaline, peyote,

n-ethyl-3-piperidyl benzilate, n-methyl-3-piperidyl benzilate, psilocybin, psilocyn, tetrahydrocannabinols, 2,5-dimethoxyamphetamine.

History: En. Sec. 5, Ch. 412, L. 1973.

54-306. Criteria for placement of drug in Schedule II. The board of pharmacists shall place a drug in Schedule II if it finds that:

- (1) the drug has high potential for abuse;
- (2) the drug has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions; and
- (3) the abuse of the drug may lead to severe psychic or physical dependence.

History: En. Sec. 6, Ch. 412, L. 1973.

54-307. Specific dangerous drugs included in Schedule II. (1) The dangerous drugs listed in this section are included in Schedule II.

(2) Any of the following drugs, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(a) opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;

(b) any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the drugs referred to in paragraph (a), but not including the isoquinoline alkaloids of opium;

(c) opium poppy and poppy straw;

(d) coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these drugs, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine.

(3) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation: alphaprodine, anileridine, bezitramide, dihydrocodeine, diphenoxylate, fentanyl, isomethadone, levomethorphan, levorphanol, metazocine, methadone, methadone-intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane, moramide-intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid, pethidine, pethidine-intermediate-a, 4-cyano-1-methyl-4-phenylpiperidine, pethidine-intermediate-b, ethyl-4-phenylpiperidine-4-carboxylate, pethidine-intermediate-c, 1-methyl-4-phenylpiperidine-4-carboxylic acid, phenazocine, piminodine, racemethorphan, and racemorphan.

(4) Any material, compound, mixture, or preparation which contains any quantity of the following drugs having a potential for abuse associated with a stimulant effect on the central nervous system:

- (a) amphetamine, its salts, optical isomers, and salts of its optical isomers;
- (b) phenmetrazine and its salts;
- (c) any drug which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers;
- (d) methylphenidate.

History: En. Sec. 7, Ch. 412, L. 1973.

54-308. Criteria for placement of drug in Schedule III. The board of pharmacists shall place a drug in Schedule III if it finds that:

- (1) the drug has a potential for abuse less than the drugs listed in Schedules I and II;
- (2) the drug has currently accepted medical use in treatment in the United States; and
- (3) abuse of the drug may lead to moderate or low physical dependence or high psychological dependence.

History: En. Sec. 8, Ch. 412, L. 1973.

54-309. Specific dangerous drugs included in Schedule III. (1) The dangerous drugs listed in this section are included in Schedule III.

(2) Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following drugs having a potential for abuse associated with a depressant effect on the central nervous system:

(a) any drug which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those drugs which are specifically listed in other schedules;

- (b) chlorhexadol;
- (c) glutethimide;
- (d) lysergic acid;
- (e) lysergic acid amide;
- (f) methyprylon;
- (g) phencyclidine;
- (h) sulfondiethylmethane;
- (i) sulfonethylmethane; and
- (j) sulfonmethane.

(3) Nalorphine.

(4) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(a) not more than one and eight tenths (1.8) grams of codeine, or any of its salts, per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(b) not more than one and eight tenths (1.8) grams of codeine, or any of its salts, per one hundred (100) milliliters or not more than

ninety (90) milligrams per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(c) not more than three hundred (300) milligrams of dihydrocodeine, or any of its salts, per one hundred (100) milliliters or not more than fifteen (15) milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(d) not more than three hundred (300) milligrams of dihydrocodeine, or any of its salts, per one hundred (100) milliliters or not more than fifteen (15) milligrams per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(e) not more than one and eight tenths (1.8) grams of dihydrocodeine, or any of its salts, per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(f) not more than three hundred (300) milligrams of ethylmorphine, or any of its salts, per one hundred (100) milliliters or not more than fifteen (15) milligrams per dosage unit, with one (1) or more ingredients in recognized therapeutic amounts;

(g) not more than five hundred (500) milligrams of opium per one hundred (100) milliliters or per one hundred (100) grams, or not more than twenty-five (25) milligrams per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(h) not more than fifty (50) milligrams of morphine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(5) The board of pharmacists may except by rule any compound, mixture, or preparation containing any stimulant or depressant drug listed in subsections (2) and (3) from the application of all or any part of this act if the compound, mixture, or preparation contains one (1) or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the drugs which have a stimulant or depressant effect on the central nervous system.

History: En. Sec. 9, Ch. 412, L. 1973.

54-310. Criteria for placement of drug in Schedule IV. The board of pharmacists shall place a drug in Schedule IV if it finds that:

(1) the drug has a low potential for abuse relative to drugs in Schedule III;

(2) the drug has currently accepted medical use in treatment in the United States; and

(3) abuse of the drug may lead to limited physical dependence or psychological dependence relative to the drugs in Schedule III.

History: En. Sec. 10, Ch. 412, L. 1973.

54-311. Specific dangerous drugs included in Schedule IV. (1) The dangerous drugs listed in this section are included in Schedule IV.

(2) Any material, compound, mixture, or preparation which contains any quantity of the following drugs having a potential for abuse associated with a depressant effect on the central nervous system: barbital, chloral betaine, chloral hydrate, ethchlorvynol, ethinamate, methohexital, meprobamate, methylphenobarbital, paraldehyde, petrichloral, and phenobarbital.

(3) The board of pharmacists may except by rule any compound, mixture, or preparation containing any depressant drug listed in subsection (2) from the application of all or any part of this act if the compound, mixture, or preparation contains one (1) or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the drugs which have a depressant effect on the central nervous system.

History: En. Sec. 11, Ch. 412, L. 1973.

54-312. Criteria for placement of drug in Schedule V. The board of pharmacists shall place a drug in Schedule V if it finds that:

(1) the drug has low potential for abuse relative to the controlled drugs listed in Schedule IV;

(2) the drug has currently accepted medical use in treatment in the United States; and

(3) the drug has limited physical dependence or psychological dependence liability relative to the dangerous drugs listed in Schedule IV.

History: En. Sec. 12, Ch. 412, L. 1973.

54-313. Specific dangerous drugs included in Schedule V. (1) The dangerous drugs listed in this section are included in Schedule V.

(2) Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which also contains one (1) or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

(a) not more than two hundred (200) milligrams of codeine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams;

(b) not more than two and five tenths (2.5) milligrams of diphenoxylate and not less than twenty-five (25) micrograms of atropine sulfate per dosage unit.

History: En. Sec. 13, Ch. 412, L. 1973.

54-314. Annual republication of schedules. The board shall revise and the department shall republish the schedules of dangerous drugs annually.

History: En. Sec. 14, Ch. 412, L. 1973;
amd. Sec. 4, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "board" for "board of pharmacists," and inserted "the department shall" before "republish."

54-315. Rules to be promulgated by board—fees. The board shall promulgate rules for its administration which are not inconsistent with this act and specifically shall levy and the department shall collect reasonable registration fees relating to the registration and control of the manufacture, distribution, and dispensing of dangerous drugs within the state; provided, however, the maximum fee for any registration shall not exceed one hundred dollars (\$100) per year.

History: En. Sec. 15, Ch. 412, L. 1973;
amd. Sec. 5, Ch. 350, L. 1974.

for "board of pharmacists," and inserted "the department shall" before "collect reasonable registration fees."

Amendments

The 1974 amendment substituted "board"

54-316. Annual registration required for manufacturer, distributor or dispenser—exceptions—inspection. (1) Every person who manufactures, distributes, or dispenses any dangerous drug within this state must, on and after January 1, 1974, obtain annually a registration issued by the department in accordance with board rules.

(2) Persons registered by the board under this act to manufacture, distribute, dispense, or conduct research with dangerous drugs may possess, manufacture, distribute, dispense, or conduct research with those drugs to the extent authorized by their registration and in conformity with the other provisions of this act.

(3) The following persons need not register and may lawfully possess dangerous drugs under this act:

(a) an agent or employee of any registered manufacturer, distributor, or dispenser of any dangerous drug if he is acting in the usual course of his business or employment;

(b) a common or contract carrier or warehouseman, or an employee thereof, whose possession of any dangerous drug is in the usual course of business or employment;

(c) an ultimate user or a person in possession of any dangerous drug pursuant to a lawful order of a practitioner or in lawful possession of a Schedule V drug;

(d) officers and employees of the state or a political subdivision of the state, while acting in the course of their official duties.

(4) The board of pharmacists shall waive the requirement for registration of practitioners, other than pharmacies, who are registered or licensed by the federal government to dispense dangerous drugs.

(5) The board may waive by rule the requirement for registration of certain manufacturers, distributors, or dispensers if it finds it consistent with the public health and safety.

(6) A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses dangerous drugs.

(7) The board may have the establishment of a registrant or applicant for registration inspected.

History: En. Sec. 16, Ch. 412, L. 1973; amd. Sec. 6, Ch. 350, L. 1974; amd. Sec. 1, Ch. 291, L. 1975.

Amendments

The 1974 amendment substituted "issued by the department in accordance with board rules" in subsection (1) for "issued by the board of pharmacists in accordance

with its rules"; substituted "board" in subsections (2) and (5) for "board of pharmacists"; substituted subsection (7) for "The board of pharmacists may inspect the establishment of a registrant or applicant for registration."

The 1975 amendment inserted subsection (4); and renumbered subsequent subsections accordingly.

54-317. Manufacturers and distributors registered unless against public interest—factors considered—practitioners' authority—research with Schedule I drugs—federal registration. (1) The board shall register an applicant to manufacture or distribute dangerous drugs included in sections 54-305, 54-307, 54-309, 54-311 and 54-313 unless it determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the board shall consider the following factors:

- (a) maintenance of effective controls against diversion of dangerous drugs into other than legitimate medical, scientific, or industrial channels;
- (b) compliance with applicable state and local law;
- (c) any convictions of the applicant under any federal and state laws relating to any dangerous drug;
- (d) past experience in the manufacture or distribution of dangerous drugs, and the existence in the applicant's establishment of effective controls against diversion;
- (e) furnishing by the applicant of false or fraudulent material in any application filed under this act;
- (f) suspension or revocation of the applicant's federal registration to manufacture, distribute, or dispense dangerous drugs as authorized by federal law; and
- (g) any other factors relevant to and consistent with the public health and safety.

(2) Registration under subsection (1) does not entitle a registrant to manufacture and distribute dangerous drugs in Schedule I or II other than those specified in the registration.

(3) Practitioners shall be registered to dispense any dangerous drugs or to conduct research with dangerous drugs in Schedules II through V if they are authorized to dispense or conduct research under the laws of this state. The board need not require separate registration for practitioners engaging in research with nonnarcotic dangerous drugs in Schedules II through V where the registrant is already registered under this act in another capacity. Practitioners registered under federal law to conduct research with Schedule I drugs may conduct research with Schedule I drugs within this state upon furnishing the board evidence of that federal registration.

(4) Compliance by manufacturers and distributors with the provisions of the federal law respecting registration (excluding fees) entitles them to be registered under this act.

History: En. Sec. 17, Ch. 412, L. 1973; for "board of pharmacists" throughout
amd. Sec. 7, Ch. 350, L. 1974. the section, and made minor changes in
style.

Amendments

The 1974 amendment substituted "board"

54-318. Suspension or revocation of registration—grounds. (1) A registration under section 54-316 to manufacture, distribute, or dispense a dangerous drug may be suspended or revoked by the board upon a finding that the registrant:

(a) has furnished false or fraudulent material information in any application filed under this act;

(b) has been convicted of a felony under any state or federal law relating to any dangerous drug or controlled substance; or

(c) has had his federal registration suspended or revoked to manufacture, distribute, or dispense controlled substances.

(2) The board may limit revocation or suspension of a registration to the particular dangerous drug with respect to which grounds for revocation or suspension exist.

(3) If the board suspends or revokes a registration, all dangerous drugs owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of drugs under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable drugs and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all dangerous drugs may be forfeited to the state.

(4) The board shall promptly cause the bureau to be notified of all orders suspending or revoking registration and all forfeitures of dangerous drugs.

History: En. Sec. 18, Ch. 412, L. 1973; for "board of pharmacists" throughout
amd. Sec. 8, Ch. 350, L. 1974. the section; substituted "cause the bureau
to be notified" in subsection (4) for
"notify the bureau"; and made minor
changes in style.

Amendments

The 1974 amendment substituted "board"

54-319. Procedure for denial, suspension, revocation, or refusal to re-new registration. (1) Before denying, suspending, or revoking a registration or refusing a renewal of registration, the board shall serve upon the applicant or registrant an order to show cause why registration should not be denied, revoked, or suspended or why the renewal should not be refused. The order to show cause shall contain a statement of the basis therefor and shall require the applicant or registrant to appear before the board at a time and place not less than 30 days after the date of service of the order, but in the case of a denial of renewal of registration, the show cause order shall be served not later than 30 days before the expiration of the registration. These proceedings shall be conducted without regard

to any criminal prosecution or other proceeding. Proceedings to refuse renewal of registration do not abate the existing registration, which remains in effect pending the outcome of the administrative hearing.

(2) The board may suspend, without an order to show cause, any registration simultaneously with the institution of proceedings under 54-318 or whenever renewal of registration is refused if it finds that there is an imminent danger to the public health or safety which warrants such action. The suspension continues in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the board or dissolved by a court of competent jurisdiction.

History: En. Sec. 19, Ch. 412, L. 1973; amd. Sec. 9, Ch. 350, L. 1974; amd. Sec. 7, Ch. 187, L. 1977.

served upon the applicant" in subsection (1) for "shall serve upon the applicant"; and made minor changes in style.

The 1977 amendment substituted a reference to 54-318 for a reference to 54-317 in subsection (2); and made minor changes in phraseology, punctuation and style.

Amendments

The 1974 amendment substituted "board" for "board of pharmacists" throughout the section; substituted "shall cause to be

54-320. Records and inventories required. Persons registered to manufacture, distribute, or dispense dangerous drugs under this act shall keep records and maintain inventories in conformance with the record-keeping and inventory requirements of federal law and with any additional rules the board of pharmacists issues.

History: En. Sec. 20, Ch. 412, L. 1973.

54-321. Order forms for drugs in Schedules I and II. Dangerous drugs in Schedules I and II shall be distributed by a registrant to another registrant only pursuant to an order form. Compliance with the provisions of federal law respecting order forms shall be deemed compliance with this section, unless the board of pharmacists prescribes particular forms to be used.

History: En. Sec. 21, Ch. 412, L. 1973.

54-322. Prescription and medical requirements for scheduled drugs. (1) No dangerous drug in Schedule II may be dispensed without the written prescription of a practitioner.

(2) In emergency situations, as defined by rule of the board, Schedule II drugs may be dispensed upon oral prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of section 54-319. No prescription for a Schedule II drug may be refilled.

(3) A dangerous drug included in Schedule III or IV, which is a prescription drug as determined under the federal or Montana food, drug and cosmetic acts shall not be dispensed without a written or oral prescription of a practitioner. The prescription shall not be filled or refilled more than six (6) months after the date thereof or be refilled more than five (5) times, unless renewed by the practitioner.

(4) A dangerous drug included in Schedule V shall not be distributed or dispensed other than for a medical purpose.

History: En. Sec. 22, Ch. 412, L. 1973; Amendments
amd. Sec. 10, Ch. 350, L. 1974.

The 1974 amendment substituted "board"
for "board of pharmacists" in subsection
(2), and made a minor change in style.

54-323. Educational programs—research—information confidential—possession of drugs by researchers. (1) The board shall carry out educational programs designed to prevent and deter misuse and abuse of dangerous drugs. In connection with these programs it may:

(a) promote better recognition of the problems of misuse and abuse of dangerous drugs within the regulated industry and among interested groups and organizations;

(b) assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of dangerous drugs;

(c) consult with interested groups and organizations to aid them in solving administrative and organizational problems;

(d) evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of dangerous drugs;

(e) disseminate the results of research on misuse and abuse of dangerous drugs to promote a better public understanding of what problems exist and what can be done to combat them; and

(f) assist in the education and training of state and local law enforcement officials in their efforts to control misuse and abuse of dangerous drugs.

(2) The board shall encourage research on misuse and abuse of dangerous drugs. In connection with the research, and in furtherance of the enforcement of this act, it may:

(a) establish methods to assess accurately the effects of dangerous drugs and identify and characterize those with potential for abuse;

(b) make studies and undertake programs of research to:

(i) develop new or improved approaches, techniques, systems, equipment and devices to strengthen the enforcement of this act;

(ii) determine patterns of misuse and abuse of dangerous drugs and the social effects thereof; and

(iii) improve methods for preventing, predicting, understanding and dealing with the misuse and abuse of dangerous drugs; and

(c) request the department to enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations, or special projects which bear directly on misuse and abuse of dangerous drugs.

(3) The board may authorize persons engaged in research on the use and effects of dangerous drugs to withhold the names and other identifying characteristics of individuals who are the subjects of the research. Persons who obtain this authorization are not compelled in any civil, criminal, administrative, legislative, or other proceeding to identify the individ-

uals who are the subjects of research for which the authorization was obtained.

(4) The board may authorize the possession and distribution of dangerous drugs by persons engaged in research. Persons who obtain this authorization are exempt from state prosecution for possession and distribution of dangerous drugs to the extent of the authorization.

History: En. Sec. 23, Ch. 412, L. 1973; for "board of pharmacists" throughout amd. Sec. 11, Ch. 350, L. 1974. the section; and inserted "request the department to enter" at the beginning of subdivision (2)(c).

Amendments

The 1974 amendment substituted "board"

54-324. Continuation of proceedings under prior law—initial registration. (1) Prosecution for any violation of law occurring prior to the effective date of this act is not affected or abated by this act.

(2) Civil seizures or forfeitures and injunctive proceedings commenced prior to the effective date of this act are not affected by this act.

(3) All administrative proceedings pending under prior laws which are superseded by this act shall be continued and brought to a final determination in accord with the laws and rules in effect prior to the effective date of the act. Any drug controlled under prior law which is not listed within Schedules I through V is automatically controlled without further proceedings and shall be listed in the appropriate schedule.

(4) The board of pharmacists shall initially permit persons to register who own or operate any establishment engaged in the manufacture, distribution, or dispensing of any dangerous drug prior to the effective date of this act and who are registered or licensed by the state.

(5) This act applies to violations of law, seizures and forfeiture, injunctive proceedings, administrative proceedings and investigations which occur following its effective date.

History: En. Sec. 25, Ch. 412, L. 1973.

54-325. Prior orders and rules continued in effect. Any orders and rules promulgated under any law affected by this act and in effect on the effective date of this act and not in conflict with it continue in effect until modified, superseded or repealed.

History: En. Sec. 27, Ch. 412, L. 1973.

54-326. Uniformity of construction. This act shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this act among those other states which enact it.

History: En. Sec. 28, Ch. 412, L. 1973.

54-327. Practitioner's failure to register as misdemeanor—penalty. Practitioners who fail or refuse to register as required by this act, shall be guilty of a misdemeanor and upon conviction therefor may be fined not to exceed one thousand dollars (\$1,000) or imprisoned in the county jail not to exceed one (1) year, or both.

History: En. Sec. 29, Ch. 412, L. 1973.

Separability Clause

Section 30 of Ch. 412, Laws 1973 read "If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable."

Repealing Clauses

Section 31 of Ch. 412, Laws 1973 read "The laws specified below are repealed except with respect to rights and duties which matured, penalties which were incurred and proceedings which were begun before the effective date of this act: sections 54-129, 54-130, 54-131 and 66-1504.1, R. C. M. 1947."

Section 32 of Ch. 412, Laws 1973 repealed all acts and parts of acts in conflict therewith.

TITLE 55—NEGOTIABLE INSTRUMENTS

(Repealed—Section 10-102, Chapter 264, Laws of 1963)

55-101 to 55-1801. (8401 to 8493, 8495 to 8597) Repealed.

Repeal

These sections (Sec. 4240, Civ. C. 1895; Secs. 5842 to 5934, 5936 to 6037a, Rev. C. 1907; Secs. 8401 to 8493, 8495 to 8597,

R.C.M. 1921), the Uniform Negotiable Instruments Law, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

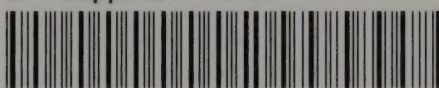
DOES NOT
CIRCULATE

State Law Library Of Montana

KFM9030 1947 .A2

Revised codes of Montana, 1947, annotate

c. 1 Suppl 1977 17-55



3 0000 00035 9871

